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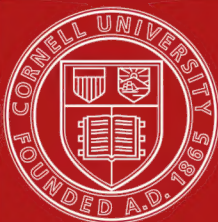


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THE LAW OF
INNKEEPERS AND HOTELS

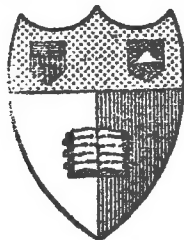
INCLUDING OTHER PUBLIC HOUSES

THEATRES, SLEEPING CARS

BY
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BUSSEY PROFESSOR OF LAW IN HARVARD UNIVERSITY.

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BOSTON
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PREFACE

The law of innkeepers was the earliest developed and is the simplest and clearest of those topics of law which are concerned with the various public-service callings. While its extent is slight, it is of considerable practical importance; and its theoretical interest is great to those who are concerned with the development and application of public-service law.

It is the last aspect of the subject which drew the attention of the author to it. The practical importance and the legal interest of the public-service law justify a thorough study and investigation of it in all its applications. The rapid and enormous growth of the modern public-service corporations has outrun the law. The general principles by which they are governed have been apprehended by the courts, and the success of the courts in applying these principles is a new triumph in our time for the plasticity of the common law; but these principles have not in all cases been formulated, after a careful study of their origin and limitations, in a way which is entirely satisfactory; and a careful study of them in all their applications seemed desirable.

In a topic of the law which took form within the Middle Ages, it is essential to glance at the history of the life out of which it grew. Some knowledge of life in the inns of medieval England is helpful if not necessary for an understanding of the law of innkeepers. This book therefore begins with a short and necessarily imperfect sketch of the conditions of life which caused the peculiarities of the law. In developing the general principles of the law conciseness of treatment has usually been sought wherever it seemed possible; but in the more difficult portions of the subject, those where there is conflict of

PREFACE

authority, and those newer developments of the law where authority is slight or altogether lacking, the subject has been discussed at greater length. Such statutes have been added as may be of interest to guests at inns and other houses of public entertainment.

There is included in this book, along with the law of innkeepers proper, such principles of law as have been developed with regard to other houses of public entertainment, such as boarding and lodging houses, restaurants and theatres. The principles regulating the action of sleeping-car companies are also considered at some length. These companies, while neither innkeepers nor carriers, are, like them, in a public employment, and they partake to some extent of the characteristics of innkeepers.

It has seemed best to bring down the citation of authorities to what are contained in some volume of digest. This book contains, or should contain, the cases cited in the American Digest through the second volume for 1905; in the English Annual Digest for 1905; and in the Canadian and other Colonial digests for 1904. It is impossible to say with confidence, even in so narrow a subject, that every case which should be included has been found and cited.

JOSEPH H. BEALE, JR.

CAMBRIDGE, April 30, 1906.

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§ 1. Inns in the ancient and medieval world.

Houses of public entertainment have been maintained in all countries from early times. In the ancient world we hear of inns in all civilized countries, in Asia, in Palestine, in Greece and in Italy.¹ Throughout the middle ages the use of such houses continued all over the world, from the cabarets and auberges of France to the khans and caravanseries of the Orient.

Travel abroad was much commoner during the middle ages than we often realize; and the traveller returning to England

¹"*Λυδοὶ . . . πρῶτοι ἀνθρώπων, τῶν ἡμεῖς ἴδμεν, . . . κάπηλοι ἐγένοντο.*"
Herodotos i, 94.

"*Οὐκ ἦν αὐτοῖς τόπος ἐν τῷ καταλύματι.*" Luke ii, 7.

"Forum Appi,

Differtum nautis cauponibus atque malignis."

Horace Sat. i, 5, 3.

might have brought home with him information about the trade of the innkeeper and suggested its establishment in his own land. But there is no reason to suppose that the English inns were not of indigenous growth; certain it is that they were noted as the cleanest, the best supplied and the most attractive inns in the world. We must turn to the habits and needs of travel in medieval England to explain the origin, the nature and the legal position of English inns.

§ 2. Study of the history of English inns necessary to understand the law.

Such study of origins it behooves us to make. The law regulating the rights and duties of an innkeeper are not in all respects what one might have looked for as applying to the innkeeper of to-day. The innkeeper occupies in our law a peculiar and apparently anomalous position: while not technically a bailee of the goods of his guests he is held up to the strictest responsibility which any bailee is under; and while apparently a mere individual householder with no corporate or other franchise specially granted he is compelled, like the great railroad corporations, to receive and entertain strangers whether he will or no. These and other duties and responsibilities of the innkeeper will be considered at length in later chapters, but in order that we may understand the reason for the apparently peculiar doctrine of the law regulating the rights and liabilities of innkeepers, in order that we may learn the extent of their responsibilities and understand their limitations, we must examine briefly, as has just been said, the early history of innkeeping in England; the character and nature of inns, and the functions which they performed in the social life of the English people at the time when the law of innkeepers was forming, that is, during the fourteenth and fifteenth centuries. The nature of the English inn in the middle ages determined the English law of innkeepers; and the principles thus established form the basis of the law of innkeepers in every place where the common law prevails.

§ 3. The condition of travel in medieval England.

There was a surprising amount of travelling in England in the middle ages. The roads to be sure were very bad and in general were impassable for loaded wagons; and the transportation of goods from place to place was therefore almost impossible. While one portion of the country was well supplied with food another portion not so far away might be in the throes of famine without a chance of relief so far as land transportation was concerned. Yet in spite of this the roads were sufficient for foot passengers, or for lightly loaded horses, and they were used by multitudes of people on foot and on horseback. Carriers of goods existed, but they transported their goods in packs by means of horses. M. Jusserand gives an interesting and graphic picture of the condition of travel on the English roads during this period.²

The roads were not only bad, but they were infested with outlaws and robbers of all sorts. Between the villages there were long stretches of forest, and these forests were the refuge of the outlaws who formed a considerable proportion of the population of the country. They might at any time attack travellers by day, but that was unusual. As it usually happened that travellers proceeded in companies, there was not much danger of attack so long as daylight lasted; but at night the danger was considerable.

§ 4. Houses of accommodation for travellers.

Such being the conditions of travelling two results followed: a traveller must carry as light weight of baggage as possible, and he must secure protection at night from thieves and outlaws. He could not conveniently carry with him food for his journey, and he must therefore find entertainment along the road. He could not safely sleep in the open and he must, therefore, find some house which would offer him protection as well as entertainment for the night. These needs led naturally to the establishment of a course of business which should supply the

² "English Wayfaring Life," *passim*.

demand. At the proper place on every main road of travel houses were devoted to the business of furnishing food, drink and safe lodging to hungry and weary travellers. Thus out of the needs of the wayfarer and as an incident of travel from place to place grew the English inn. It was established to supply the needs of the traveller along his journey, to wit, to furnish food and drink for man and beast and rest and safety for the night.

"Inns . . . were intended for the middle class: merchants, small landowners, packmen, etc. A certain number of beds were placed in one room, and each man bought separately what he wished to eat, chiefly bread, a little meat, and some beer. Complaints as to the excessive prices were not much less frequent then than now; the people petitioned Parliament and the king interfered accordingly with his accustomed useless good will. Edward III promulgated, in the 23d year of his reign, a statute to constrain 'hostelers et herbergers' to sell food at reasonable prices; and again, four years later, tried to put an end to the 'great and outrageous cost of victuals kept up in all the realm by innkeepers and other retailers of victuals, to the great detriment of the people travelling across the realm.' " ³

The inn was not the only accommodation which weary travellers might find in the course of their journey. The religious houses practiced hospitality, and freely received certain classes of people. The nobles and magnates habitually resorted to them for refreshment and were received both in consideration of their own bounty and as representatives of the class to which the community owed its foundation and its wealth. The very poor also were received out of mere charity, for hospitality to the poor was one of the first requirements of religion as it was understood in the middle ages. To the houses of the friars, therefore, rich and poor resorted for entertainment; but the great middle class, the men who were able to pay their way,

³ Jusserand, "English Wayfaring Life," p. 126.

were not welcome there. If they had the means to pay for accommodation and were without special claim to favor, they must go to those whose business it was to care for them. The great houses of nobles and gentry were also open to travellers who were in need of entertainment, but there, too, it was as a rule only the rich and the poor who were expected to avail themselves of the private hospitality. Anyone lost or benighted would of course be received; but the lord of the manor had no desire to compete with the innkeeper who must make his livelihood from the wayfarer.

Besides these private houses and the inn for necessary entertainment, the alehouse or tavern supplied incidental refreshment to the traveller, though primarily intended to serve another purpose. This house primarily supplied the wants of the inhabitants of the place, for there the native found rest, heat, companionship and beer. He could stay until the stroke of curfew, and then was turned out to find his way home as best he might, quarrelling and fighting by the way, using his knife freely, or falling from his horse into a convenient stream, the easy prey for enemies and for robbers. "The law would not have a tavern haunted out of season," and the nighttime was out of season. The difference between the inn and the tavern is therefore obvious. The one was instituted for the weary traveller, the other for the native; the one furnished food that the traveller might continue his journey, the other furnished drink for the mere pleasure of neighbors; the one was open to the traveller for protection at night, the other turned its guest out at the very moment when he most needed protection, and left him to find it, if his remaining senses permitted him to do so, in his own home. It is unnecessary, therefore, to point out the fact that a tavern is not an inn, and that the innkeeper's duties do not extend to the tavernkeeper.

§ 5. Development of inns from private houses.

Such being the course of life among wayfarers in medieval England, the inn was a natural outgrowth of the conditions.

The inn, the public house of entertainment, was naturally evolved from the private house. Any householder might receive a stranger for the night, as indeed in rural communities many householders are apt to do. If in the course of time one such householder came, either through the superiority of his own accommodation or by reason of the lack of competition, to receive all persons who in that village needed accommodation he would thereby have become an innkeeper. He would have done it perhaps gradually, without any distinct change marking the transition from the private householder to the public innkeeper; nor would the accommodation he offered be different in kind from the accommodation that would be offered by the private householder furnishing occasional accommodation to a transient guest. The inn was an outgrowth of the private house, and the kind of house employed and the general conduct of life in the house would be the same in the early inn and the private house of the same period. In order to discover the nature of the accommodation afforded by the inn it will, therefore, be worth while to examine the plan of life in the ordinary dwelling of the time.

The English houses of the thirteenth and fourteenth centuries differed greatly, of course, in size and in elegance, but the plan of life in all houses had certain common features. Life indoors centred about the great hall, the principal part of the house, to which other parts were added as they might be required. In the hall the days were spent, so far as they were spent indoors, meals were eaten, and night having come the tables were removed and the beds were spread. The mistress, to be sure, had a small room of her own, the bower, into which she could retire at any time, and the master of the house had a separate chamber in which he slept. But the retainers, the servants and the ordinary guests slept together in the common hall. The house of a man who was well to do might have an additional chamber for guests, and a stable was usually attached to the hall at one end. The hall was warmed and lighted by a great fire. In each chamber there was a small fire-

place for heat, and light was given by a candle. The inn was undoubtedly built on this same plan, even when a building was built especially for an inn; in most cases doubtless the inn had been built for an ordinary dwelling house. The weary traveller coming to the inn at nightfall would have his supper at the great table, and his bed would then be spread in the hall itself. Heat and such light as was necessary he would have from the hall fire. If he brought a horse and paid for his keep we are told he paid no extra charge for his bed, but the foot traveller paid a small sum for his lodging. A traveller of better estate would pay for and receive accommodation in a small chamber. There he would be served with food, and his bed would be spread; and he would be charged not merely for the food and lodging, but also for his fire and his candle. Even there he would not be likely to occupy the chamber alone, or even a bed alone; the king himself on his travels was expected to have a bedfellow, and a private person would be fortunate if he had only one. Still he was travelling in luxury if he shared with two or three others a private chamber, a private bed and a private fire. As time went on and the business of the innkeepers increased, especially in the great towns, buildings were built as inns, the number of chambers being greatly increased. In the sixteenth century we hear of inns in London which could accommodate one hundred guests. It must be clear that with so many guests the common hall would be needed for their reception and for the general table; and the guests must have all been put into special chambers for sleeping; but most of these were undoubtedly still common chambers, in which travellers were put as they happened to come, sharing not merely the chamber but the bed with strange bedfellows.

§ 6. Development of the law.

Such being the business and such the customs of innkeepers, their responsibility, which seen through modern eyes seems anomalous, is easily explained. They undertake as a business

to furnish food, protection and shelter to the wayfaring guest; having undertaken such a public business, and the public need being concerned, the innkeeper must supply his service to all; and in order to perform his undertaking he must furnish not merely sufficient food and a tight roof, but sufficient protection against the dangers of country travelling. Either to refuse shelter, to fail to provide food, or to permit robbers from outside to enter the inn would be a breach of his obligation and would render him liable to action.¹¹ But this is not the limit of his obligation. If he puts a stranger into a common room with other strangers and bids him sleep, the innkeeper must undertake his care and protection during the night, not merely against persons outside but against strange bedfellows within the inn. It is interesting to notice how history repeats itself in this case. A much later invention, the sleeping car, brought back to modern life some of the obsolete features of the life of the middle ages. A number of persons, strangers to one another, were received to sleep in a common room open to persons from outside. The existence of the same conditions imposed a similar responsibility, and the proprietor of the sleeping car, like the innkeeper in the middle ages, was obliged to protect his guests as well as he could against danger from within and from without. The innkeeper's liability did not exist in the case of a private chamber, into which only the guest who engaged it or friends brought into it by himself were allowed to enter. If a man engaged a room and was put in exclusive control of it, and was given the key, the protection which the innkeeper was obliged to furnish him was, therefore, merely against outsiders who might be permitted to break into the room without right. Against the inmates the guest had no right to call upon the innkeeper for protection. This is the reason of the stress laid in the old cases upon the fact that the innkeeper has given the guest the key of his room; this gift of key marked and symbolized the fact that the room was no longer in the innkeeper's disposal, that he could quarter no stranger in it, and that the guest and his friends alone could

enter, and, therefore, against those who rightly entered the innkeeper undertook no responsibility.

The business of innkeeper having been carried on in this way the distinctive features of the law are easily accounted for. The principles of the innkeeper's liability once being established have continued unchanged until the present day; and the hotel keeper in the great cities of the United States derives his rights and traces his responsibilities to the host of the humble village inn of medieval England.

CHAPTER II.

THE NATURE OF AN INN.

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| <p>§ 11. The inn a public house.
12. The innkeeper professes a public business.
13. Distinction between innkeeper and private host for hire.
14. The innkeeper serves transient guests.
15. The innkeeper supplies all needs of a traveller.
16. House conducted on the "European plan."</p> | <p>§ 17. The innkeeper need not supply all the desires of a guest.
18. The innkeeper is the proprietor of an inn.
19. How the innkeeper's profession is made.
20. Failure to procure a license.
21. Carrying on of other business.
22. Name given to inn is immaterial.</p> |
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§ 11. The inn a public house.

From the earliest times the fundamental characteristic of an inn has been its public nature. It is a public house, a house of public entertainment, or, as it is legally phrased, a common inn.¹ "An inn is a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received."² "A house [kept] publicly, openly and notoriously for the entertainment and accommodation of travellers and others, for a reward."³

The whole system of travel and communication in rural England, at the time the law of inns was in the making, required, as has been seen,⁴ that the weary traveller should find at convenient places beside the highway houses of entertainment and shelter to which he might resort during his journey for food,

¹ *Horslow's Case*, Year Book 22 Hen. 6, 21, pl. 38 (1444).

² *Best, J.*, in *Thompson v. Lacy*, 3 B. & Ald. (Eng.) 283 (1820).

³ *State v. Stone*, 6 Vt. 295 (1834).

⁴ *Ante*, § 4.

rest and protection. The ordinary laws of supply and demand would lead to the establishment of such houses by the roadside at places which would sufficiently serve the public convenience; but those laws could not be trusted to secure to each individual the benefit of the food and shelter therein provided. The desire for gain is not the only passion which moves men, innkeepers or others. Hatred, prejudice, envy, sloth or undue fastidiousness might influence an innkeeper to refuse entertainment to a traveller, even though he could pay his score. The supply of food and shelter to a traveller was a matter of public concern, and the house which offered such food and shelter was engaged in a public service. The law must make injustice to the individual traveller impossible; the caprice of the host could not be permitted to leave a subject of the king hungry and shelterless. In a matter of such importance the public had an interest, and must see that, so far as was consistent with justice to the innkeeper, his inn was carried on for the benefit of the whole public; and so it became in an exact sense a public house.

§ 12. The innkeeper professes a public business.

It follows from the nature of the inn that an innkeeper is one who professes to serve the public by keeping an inn. The most striking characteristic of his employment, that which distinguishes his employment from that of an ordinary person's, is the fact that his calling is a public one. He is a "common innkeeper,"⁵ who, in the quaint language of Lord Holt,⁶ "has made profession of a trade which is for the public good, and has thereby exposed and vested an interest of himself in all the king's subjects that will employ him in the way of his trade." Whether a man is an innkeeper depends, therefore, in the first place upon whether he makes a profession of serving the public needs; whether his regular business is entertaining travellers.

§ 13. Distinction between innkeeper and private host for hire.

In many places where there are no inns, private householders

⁵ Year Book, 11 Hen. 4, 45, pl. 18 (1410).

⁶ Lane v. Cotton, 12 Mod. 472, 484 (1701).

occasionally, and even frequently, take in and accommodate travellers and receive compensation for it; but merely as a matter of accommodation, and without making a business of the practice. They receive the stranger and traveller out of mere hospitality, or from motives among which gain is merely incidental, and their livelihood is not derived from their hospitality. Such persons, though they receive compensation for the accommodation they furnish, are not innkeepers.⁷

Thus in a Texas case ⁸ it was shown that a man had a house on the high road, much visited by travellers, who were uniformly entertained and charged; these facts were notorious and relied on by travellers. On the other hand, he often declared that he did not keep an inn, he refused to take boarders, and often entertained his friends and countrymen free of charge. The court held that the question whether he was or was not an innkeeper was for the jury and that the jury might on this evidence find him an innkeeper. In the course of his opinion Judge Roberts said:

“There are numerous farmers situated on the public roads of the country, who occasionally, and even frequently, take in and accommodate travellers, and receive compensation for it, who are not innkeepers, and are not liable as such. It is not their business or occupation, nor do they prepare and fit up their establishments for it. They yield to the laws of hospitality, in receiving and entertaining the stranger and the traveller, yet they cannot afford to do so without some compensation. This view of the subject the court also presented to the minds of the jury, by telling them in substance that if the defendant only occasionally entertained travellers for compensation, when it suited his own pleasure, he did not thereby become an innkeeper.”

In a similar case in Iowa it was proved that the person al-

⁷ *Lyon v. Smith*, 1 Morris (Ia.), 184 (1843); *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 74, 48 Am. Dec. 416 (1848); *State v. Matthews*, 2 Dev. & B. (N. C.) 424 (1837); *Howth v. Franklin*, 20 Tex. 798, 73 Am. Dec. 218 (1858).

⁸ *Howth v. Franklin*, 20 Tex. 798, 73 Am. Dec. 218 (1858).

leged to be an innkeeper had entertained several individuals at his house overnight and been paid a compensation for his care and attentions; but there was no proof that he held himself out in any manner as a common innkeeper, or that he was so regarded by the public. The court upheld a finding that the person was not an innkeeper.⁹ In the course of his opinion Chief Justice Mason said: "To render a person liable as a common innkeeper, it is not sufficient to show that he occasionally entertains travellers. Most of the farmers in a new country do this, without supposing themselves answerable for the horses or other property of their guests which may be stolen, or otherwise lost, without any fault of their own. Nor is such the rule in older countries, where it would operate with far less injustice, and be less opposed to good policy than with us. To be subjected to the same responsibilities attaching to innkeepers, a person must make tavernkeeping, to some extent, a regular business, a means of livelihood. He should hold himself out to the world as an innkeeper. It is not necessary that he should have a sign or a license, provided that he has in any other manner authorized the general understanding that his was a public house, where strangers had a right to require accommodation. The person who occasionally entertains others for a reasonable compensation is no more subject to the extraordinary responsibility of an innkeeper than he is liable as a common carrier, who in certain special cases carries the property of others from one place to another for hire."

If, however, the housekeeper does as a matter of fact receive every member of the public who applies for entertainment, as a regular course of business, he is an innkeeper, though he may claim that his house is still a private one.¹⁰

The question whether a house where a guest is entertained is a public inn or a private house is a question of fact, to be

⁹ *Lyon v. Smith, Morris* (Ia.), 184 (1843).

¹⁰ *Jaquet v. Edwards*, 1 Jamaica, 4 (1867).

determined, like any fact, upon all the evidence;¹¹ and an appellate court will not disturb the finding of the lower court on the question, though it might as an original question have come to a different conclusion on the evidence.¹²

In determining the question, the facts may lead to a presumption against a party. Thus if a housekeeper does an act which he could not legally do unless he is an innkeeper he will be presumed, in the absence of evidence to the contrary, to be an innkeeper.¹³

§ 14. The innkeeper serves transient guests.

The person whose needs the innkeeper undertakes to serve is the weary traveller; a person who stays with him merely for a short time in the course of his journey. The inn is therefore primarily provided for transient guests; and one who does not profess to serve transient guests is not an innkeeper.¹⁴

This characteristic of an innkeeper is the distinguishing feature between an inn and a boarding house. A boarding house is for the entertainment not of transient guests, who must find food and shelter at once, but of more or less permanent occupants, who may at their leisure make bargains with their host. The boarder being in this position, the housekeeper may exercise the same liberty. If the boarder may select and bargain for his boarding place, so the housekeeper may select and bargain with his guests.¹⁵ The distinction and the reason for it

¹¹ *Howth v. Franklin*, 20 Tex. 798, 73 Am. Dec. 218 (1858); *Clary v. Willey*, 49 Vt. 55 (1875).

¹² *Rees v. McKeown*, 7 Ont. App. 521 (1882).

¹³ *Korn v. Schedler*, 11 Daly (N. Y.), 234 (1882).

¹⁴ For this reason it was held necessary in the old cases to allege, in an action by a guest against an innkeeper, that the plaintiff was "transient." *Grimstone v. An Innkeeper*, *Hetley* (Eng.), 49 (1627); *Drope v. Thaire*, *Latch* (Eng.), 126 (1626).

¹⁵ *Parker v. Flint*, 12 Mod. 254, *Carthew*, 417 (Eng. 1701); *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Beall v. Beck*, Fed. Cas. No. 1161, 3 Cr. C. C. 666 (D. C. 1829); *Willard v. Reinhardt*, 2 E. D. Smith (N. Y.), 148 (1853); *Commonwealth v. Cuncannon*, 3 Brewst. (Pa.), 344 (1869).

were brought out very neatly in an early Georgia case.¹⁶ The defendant, who was proceeded against on a statute affecting innkeepers, was the keeper of a hotel at a country watering place, who undertook, either in his hotel or in cottages near it which he rented, to entertain for a season visitors at the watering place. In holding that he was not an innkeeper Judge Nesbet said: "It is because inns and innkeepers have to do with the travelling public—strangers—and that for brief periods, and under circumstances which render it impossible for each customer to contract for the terms of his entertainment, that the law has taken them so strictly in charge. And it is because of the compulsion innkeepers are under, to afford entertainment to anybody, that the law has clothed them with extraordinary privileges. Now, under this (it is submitted), correct legal view of innkeepers, was the plaintiff in this case, an innkeeper? Was that his business? His business was to rent his houses to families or persons who might contract with him for their occupancy. They are not his guests, they are beyond dispute, his tenants, and he their landlord. His business was, to furnish board, lodging and attention. But to whom? To the wayfaring world? No. But to persons who might resort to his healthful fountains and salubrious locality, for a season, that is, for the fall and summer months. They were not his guests for a day, or night, or week, but his lodgers or boarders for a season. They were not chargeable according to any tariff of rates, fixed by law, but according to contract, varied, beyond doubt, according to time, amount of accommodation, and other circumstances. These are not the characteristics of the business of innkeeping, but indicate a boarding house. As well might every private boarding house in the State, be adjudged an inn or a tavern, as this party's establishment. The object for which people are stated in the declaration, to have visited the springs, necessarily forbids the idea of their being travellers, and of plaintiff's house being a tavern. It was health, in the use of the medicinal

¹⁶ Bonner v. Welborn, 7 Ga. 296 (1849).

waters. That object indicates abiding—permanency of location, for a season, at least. These waters cannot cure by seven draughts; or like the waters of Jordan, by seven washings.”¹⁷

But the fact that a person receives those who are not transient guests does not prevent his being an innkeeper. Though in its origin the business of an innkeeper was to supply the needs of travellers, yet once in the business an innkeeper will naturally be quite willing to do a profitable business with other persons. An innkeeper will ordinarily receive and care for any proper person who applies, even though, not being a traveller, he could not demand such reception as a legal right; and such reception of guests does not work a change of employment. One who keeps a house of entertainment for travellers is none the less an innkeeper because he also receives other persons.¹⁸

Even if the innkeeper caters for permanent guests, and makes his inn attractive for them, he is none the less an innkeeper if he professes also to supply the needs of travellers, as most hotel keepers do. Thus the facts that a house stands upon enclosed grounds which are reserved for the exclusive use of guests, that the gates are closed at night, and that the house is thus rendered attractive as a pleasure resort and guests are thereby induced to remain a considerable time, do not prevent the house from being an inn if it is held out as a place of entertainment for travellers.¹⁹ And even in a case where the chief attraction of a hotel was a mineral spring connected with it, and it did not appear that persons resorted to the hotel except such as desired to use it as a watering place, it was assumed without argument that the hotel was an inn.²⁰

¹⁷ See to the same effect *dicta* in *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Southwood v. Myers*, 3 Bush (Ky.), 681 (1868).

¹⁸ *Wintermute v. Clark*, 5 Sandf. (N. Y.) 242 (1851). Conversely a keeper of a boarding house may entertain transient guests. *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848).

¹⁹ *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188 (1891).

²⁰ *Willis v. McMahon*, 89 Cal. 156, 26 Pac. 649 (1891).

§ 15. The innkeeper supplies all needs of a traveller.

The innkeeper supplies all the entertainment which the weary traveller actually needs on his road; which in lowest terms is food, shelter and protection.²¹ If the keeper of a house of entertainment does not undertake to furnish either of these necessities he is not a common innkeeper; and this requirement distinguishes inns from many similar houses of public entertainment. Thus a house which does not supply lodging is not an inn; and this rule excludes from among inns a restaurant or eating house.²² On the same principle a coffee house²³ or a drinking saloon²⁴ is not an inn. And for the same reason a house that furnishes only lodging without food, like a lodging house,²⁵ or an apartment hotel²⁶ or a sleeping car²⁷ is not an inn.

§ 16. House conducted on the "European plan."

If all elements of entertainment required by a traveller are furnished him by the host the house may be an inn, notwithstanding they are independently furnished and separately charged. Thus a hotel is no less an inn though it is conducted

²¹ *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Walling v. Potter*, 35 Conn. 183 (1868); *Wintermute v. Clark*, 5 Sandf. (N. Y.) 242 (1851); *Cromwell v. Stephens*, 2 Daly (N. Y.), 15 (1867); *Dickerson v. Rogers*, 4 Humph. (Tenn.) 179, 40 Am. Dec. 642 (1843); *Thompson v. Lacy*, 3 B. & Ald. (Eng.) 283 (1820).

²² *Sheffer v. Willoughby*, 163 Ill. 518, 45 N. E. 253, 34 L. R. A. 464, affirming 61 Ill. App. 263 (1896); *Block v. Sherry*, 43 N. Y. Misc. 342, 87 N. Y. Supp. 160 (1904); *Carpenter v. Taylor*, 1 Hilt. (N. Y.) 193 (1856); *Regina v. Rymer*, 2 Q. B. D. 136, 46 L. J. M. C. 108 (Eng. 1877); *Dunn v. Bean*, Quebec Rep. 11 Super. Ct. 538 (1897).

²³ *Doe v. Laming*, 4 Camp. (Eng.) 73, 77 (1814).

²⁴ *People v. Jones*, 54 Barb. (N. Y.) 311 (1863); *Kelly v. New York Excise Comrs.*, 54 How. Pr. (N. Y.) 327 (1877); *Pabe v. Myers*, 5 Ohio S. & C. P. Dec. 578 (1895); *Regina v. Rymer*, 2 Q. B. D. 136, 46 L. J. M. C. 108 (Eng. 1877).

²⁵ *Kelly v. New York Excise Comrs.*, 54 How. Pr. (N. Y.) 327 (1877); *Cromwell v. Stephens*, 2 Daly (N. Y.), 15 (1867); *Parker v. Flint*, 12 Mod. (Eng.) 254 (1701).

²⁶ *Davis v. Gay*, 141 Mass. 531, 6 N. E. 549 (1886).

²⁷ *Pullman Palace Car Co. v. Smith*, 73 Ill. 360, 24 Am. Rep. 258 (1874); *post* § 342.

on the European plan, so called; the fact that food is separately obtained and paid for, and the guest may procure his food elsewhere if he chooses, does not alter the legal character of the house.²⁸

In the case of such a hotel it usually happens that food is supplied in a restaurant, connected with the hotel, but open to everyone, not merely to guests of the hotel. It is this connection of the restaurant with the hotel as part of the same establishment that makes the hotel an inn. The hotel keeper cannot avoid the responsibility of an innkeeper by proving that the restaurant is in fact conducted by an independent person. If the hotel is held out to the public as having a restaurant connected with it and forming part of it, it is an inn, and not a mere lodging house.²⁹ But, on the other hand, if there is no holding them out as parts of the same establishment, the fact that an independent restaurant is conducted under the same roof and is resorted to by lodgers, does not make a lodging house an inn;³⁰ nor does the fact that the keeper of the lodging house is in the habit of sending out to procure cooked food for his guests at their request.³¹

§ 17. The innkeeper need not supply all the desires of a guest.

Though the inn is a house which professes to supply all that a traveller actually needs on his journey, it need not be perfectly equipped to supply everything that he might desire. Thus, one may keep an inn though he does not profess to supply accommodation for horses,³² or to sell wine or liquor.³³

²⁸ *Bullock v. Adair*, 63 Ill. App. 30 (1895); *Johnson v. Chadbourn Furnace Co.*, 89 Minn. 310, 94 N. W. 874 (1903); *Krohn v. Sweeney*, 2 Daly (N. Y.), 200 (1867); *McClure v. Krumbholz*, 9 Pa. Dist. R. 544, 31 Pittsb. Leg. J. (N. S) 3, 14 York Leg. Rec. 31 (1900).

²⁹ *Johnson v. Chadbourn Furnace Co.*, 89 Minn. 310, 94 N. W. 874 (1903).

³⁰ *Cromwell v. Stephens*, 2 Daly (N. Y.), 15 (1867).

³¹ *Kelly v. New York Excise Comrs.*, 54 How. Pr. (N. Y.) 327 (1877).

³² *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869).

³³ *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *People*

§ 18. The innkeeper is the proprietor of an inn.

The innkeeper is the person who on his own account is carrying on the business of an inn. In other words, he is the proprietor of the establishment. The person actually employed as manager, though he has the whole direction of the enterprise, is not an innkeeper if he is acting on behalf of someone else. Thus the salaried manager of a hotel belonging to a corporation is not to be held responsible as an innkeeper; the corporation is the innkeeper.³⁴

On the other hand, the real owner of the enterprise, the person in actual charge of it, cannot escape responsibility by taking out a license to conduct an inn in the name of another, or by placing another's name on the sign or the advertisements as the ostensible innkeeper. In spite of such devices, the person who actually conducts the inn will be held as the innkeeper.³⁵

§ 19. How the innkeeper's profession is made.

The profession of readiness to serve the public need not be made in any particular way; it is enough that by word or act the innkeeper makes public his intention to become such. It has been usual, particularly in former times, to advertise his house by hanging out a sign; but it is not essential to a man's being an innkeeper that he should do so. If he in fact carries on the business publicly as innkeeper he will be held as

v. Murphy, 5 Parker Cr. R. (N. Y.) 130 (1861); Curtis v. State, 5 Ohio, 324 (1832).

³⁴ Dixon v. Birch, L. R. 8 Ex. 135, 42 L. J. Ex. 135, 28 L. T. 360, 28 W. R. 443 (Eng. 1873).

³⁵ McKay v. Brown, 5 Can. L. J. 91 (1859). It is to be noticed that an employee who is not the real innkeeper but who conducts the inn for another, being paid a salary, may be indicted for keeping an inn without a license. Winter v. State, 30 Ala. 22 (1857). The question is a different one from that presented in the text; for any person may be indicted who in fact carries on the business, though he does it on behalf of another, who alone is subject to the liabilities of an innkeeper and liable to a civil action. He is taking part in the commission of a misdemeanor, and is therefore criminally responsible as principal.

such, although he never displayed a sign.³⁶ The profession may be made by any method of soliciting the patronage of the public;³⁷ as by advertising, by keeping a public register, and by running a coach to a railroad station.³⁸

What acts are sufficient to justify a finding that a man is an innkeeper is a question which has often been a subject of judicial decision. In a case in California the keeper of the "What Cheer House" insisted that his house was a lodging house and not an inn; because, as he said, the eating department was distinct from the lodging department. It appeared that in the basement of the "What Cheer House," and connected with it by a stairway, there was a restaurant, which was conducted by the defendant and two other persons jointly, and that the three shared the profits. The court held that the "What Cheer House" was an inn.³⁹ In the course of his opinion Judge Rhodes said: "Where a person, by the means usually employed in that business, holds himself out to the world as an innkeeper, and, in that capacity, is accustomed to receive travellers as his guests, and solicits a continuance of their patronage, and a traveller relying on such representations goes to the house to receive such entertainment as he has occasion for, the relation of innkeeper and guest is created, and the innkeeper cannot be heard to say that his professions were false, and that he was not in fact an innkeeper. The rules regulating the respective rights, duties and responsibilities of innkeeper and guest have their origin in consideration of public policy, and were designed mainly for the protection and security of travellers and their property. They would afford the traveller but poor security if, before venturing to intrust his property to one who by his agents, cards, bills, advertisements, sign, and all the

³⁶ Anonymous, Godbolt, 345, pl. 440 (Eng. 1623); Lyon v. Smith, Morris (Ia.), 184 (1843); Dickerson v. Rogers, 4 Humph. (Tenn.) 179, 40 Am. Dec. 642 (1843).

³⁷ Pinkerton v. Woodward, 33 Cal. 557, 91 Am. Dec. 657 (1867).

³⁸ Fay v. Pacific Improvement Co., 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188 (1891).

³⁹ Pinkerton v. Woodward, 33 Cal. 557, 91 Am. Dec. 657 (1867).

means by which publicity and notoriety can be given to his business, represents himself as an innkeeper, he is required to inquire of the employees as to their interest in the establishment, or take notice of the agencies or means by which the several departments are conducted. The same considerations of public policy that dictated those rules demand that the innkeeper should be held to the responsibilities which, by his representations, he induced his guest to believe he would assume. We think the jury were fully warranted by the evidence in finding that the 'What Cheer House' was an inn."

In a later case in the same State the court dealt with a similar question as follows:⁴⁰ "We think that the evidence in this case is full and complete to the point that the 'Hotel Del Monte' was a public inn. It not only had a name indicating its character as such, but it was also shown that it was open to all persons who have a right to demand entertainment at a public house; that it solicited public patronage by advertising and in the distribution of its business cards, and kept a public register in which its guests entered their names upon arrival, and before they were assigned rooms; that the hotel, at its own expense, ran a coach to the railroad station for the purpose of conveying its patrons to and from the hotel; that it had its manager, clerks, waiters, and in its interior management all the ordinary arrangements and appearances of an hotel, and the prices charged were for board and lodging. These facts were certainly sufficient to justify the court in finding, as it did, that the appellant was an innkeeper."

§ 20. Failure to procure a license.

The failure of an innkeeper to procure a license, as required by law, does not prevent him from being an innkeeper;⁴¹

⁴⁰ De Haven, J., in *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188 (1891).

⁴¹ *Lanier v. Youngblood*, 73 Ala. 587 (1883); *Lyon v. Smith, Morris (Ia.)*, 184 (1843); *Norcross v. Norcross*, 53 Me. 163 (1865); *Atwater v. Sawyer*, 76 Me. 539, 49 Am. Rep. 634 (1884); *State v. Wynne*, 1 Hawks (N. C.), 451 (1821); *Dickerson v. Rogers*, 4 Humph. (Tenn.) 179, 40 Am. Dec. 642 (1843).

nor does his act of taking out a license in the name of another.⁴²

§ 21. Carrying on of other business.

An innkeeper may at the same time and on the same or neighboring premises carry on a different business, which though similar to that of the innkeeper is not identical with it. For instance, an innkeeper who is bound, as such, to have a stable for the accommodation of the horses of his guests, may in the same stable carry on the business of livery stable keeper. If, under those circumstances, a horse is given to the innkeeper it would be a question for the jury whether it was received by him as innkeeper or keeper of a livery stable.⁴³ In the same way, an innkeeper may establish under the same roof as his inn a restaurant for the accommodation of persons who are not his guests. If the restaurant is entirely distinct from the rooms proper to the inn, a person who resorts merely to the restaurant is not a guest. So where an innkeeper had the refreshment bar at the side of his building with a separate entrance it was held that one served there was not a guest.⁴⁴ On this principle one who, not being a lodger in a hotel on the European plan, resorts to the restaurant connected with the hotel for food is not a guest.⁴⁵

§ 22. Name given to inn is immaterial.

The innkeeper cannot escape responsibility by giving some other name than inn or hotel to his house. So where the owner holds himself out as ready to supply all travellers with the food and drink they require, he is an innkeeper, though he call his house a "boarding house,"⁴⁶ or a "coffee palace."⁴⁷ On the

⁴² Schermerhorn v. Tripp, 2 Caines (N. Y.), 108 (1804); McKay v. Brown, 5 Can. L. J. 91 (1859).

⁴³ Mason v. Thompson, 9 Pick. (Mass.) 280 (1830).

⁴⁴ Regina v. Rymer, 2 Q. B. D. 136, 46 L. J. M. C. 108 (Eng. 1877).

⁴⁵ Krohn v. Sweeney, 2 Daly (N. Y.), 200 (1867).

⁴⁶ State v. Stone, 6 Vt. 295 (1834).

⁴⁷ Miller v. Federal Coffee Palace, 15 Victorian Law R. 30 (1889).

other hand, calling a house a "hotel" does not make it an inn. The "International Hotel," so called, being really a boarding house and restaurant, will not be held an inn merely because of its name.⁴⁸

In this country the words *hotel* and *tavern* are usually used as synonymous with *inn*; and a hotel or tavern which is maintained for the accommodation of travellers is an inn.⁴⁹

⁴⁸ *Carpenter v. Taylor*, 1 Hilt. (N. Y.) 193 (1856).

⁴⁹ *Commonwealth v. Shortridge*, 3 J. J. Marsh. (Ky.) 638 (1830); *City of St. Louis v. Siegrist*, 46 Mo. 593 (1870); *Town of Crown Point Poor Overseers v. Warner*, 3 Hill (N. Y.), 150 (1842); *Cromwell v. Stephens*, 2 Daly (N. Y.), 15 (1867); *Taylor v. Monnot*, 4 Duer (N. Y.), 116 (1854); *People v. Jones*, 54 Barb. (N. Y.) 311 (1863); *Jones v. Osborn*, 2 Chit. (Eng.) 484 (1785). Where "tavern" is used as a synonym for liquor saloon or drinking shop, it is of course not the same as an inn. *Regina v. Rymer*, 2 Q. B. D. 136, 46 L. J. M. C. 108 (Eng. 1877).

CHAPTER III.

OTHER HOUSES OF ENTERTAINMENT.

§ 31. Other public houses not in public calling.	§ 34. Lodging and apartment houses.
32. Boarding houses.	35. Restaurants.
33. Livery stables.	36. Theatres.
	37. Sleeping cars and steamboats.

§ 31. Other public houses not in public calling.

Similar in many respects to inns are other houses maintained for use of the public; but none of them ministers to any absolute public necessity, and none of them, therefore, is regarded as engaged in a public calling. No part of the law of public callings, therefore, applies to these establishments; and the questions examined in Title II of this work are inapplicable to them. Furthermore, the law regulating the extent of liability of innkeepers is, as we shall see, in many respects peculiar, and does not apply to keepers of other public houses. Nor does any keeper of such a house have a lien at common law though, as will be seen, a lien has been given to some of them by statute. But in other respects the same principles of law apply to these houses of entertainment as to inns.

In the following pages cases involving other public houses, not inns, will be treated in their place, noting in every case of importance the nature of the house involved, and the peculiar rules of liability of each house of the sort will be treated in a separate chapter.¹ In this chapter the principal houses of the sort will be enumerated and their nature stated.

§ 32. Boarding houses.

The distinction between an innkeeper and a boarding-house

¹ *Post*, chapters 23-26.

keeper is that the latter, not having made a profession of his services to the public, is at liberty to choose his guests, and to make special arrangements with them.² Since the boarding house is particularly designed for a residence of some permanence there is time for the parties to come to a mutually satisfactory agreement by consultation, and there is therefore no need for the law to protect the boarder.³ But though designed for permanent boarders, a boarding house is none the less such because transient guests are entertained there.⁴

The trade of boarding-house keeper may be regulated by statute, in exercise of the police power of the State.⁵ The keeper is frequently given a lien by statute.⁶ The extent of the boarding-house keeper's liability will be examined in a later chapter.⁷

§ 33. Livery stables.

A livery stable is a place where horses are groomed, fed, and hired and vehicles are let.⁸ It is not altogether a place for public entertainment, since an important part of its business is the letting to the public of its own horses and vehicles. It may however be regulated by statute, and it is often given a statutory lien.

§ 34. Lodging and apartment houses.

Lodging and apartment houses differ from inns in that they furnish lodging only, and not food. They differ from each other in that the control of the lodging house is kept by the proprietor or keeper of it, who (like the innkeeper) licenses the

² *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Beall v. Beck*, Fed. Cas. No. 1161, 3 Cr. C. C. 666 (Dist. Col. 1829); *Willard v. Reinhardt*, 2 E. D. Smith (N. Y.), 148 (1853); *Commonwealth v. Cuncannon*, 3 Brewst. (Pa.) 344 (1869).

³ *Manning v. Wells*, 9 Humph. (Tenn.) 746, 51 Am. Dec. 688 (1849).

⁴ *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848).

⁵ *Post*, § 41.

⁶ *Post*, § 297.

⁷ *Post*, chapter 21.

⁸ *Williams v. Garignes*, 30 La. Ann. 1094 (1878).

lodger to occupy his room; while the apartment is leased to the occupant of it, who gets the exclusive possession and becomes a tenant.⁹ The lodging house is a public house, may be regulated by statute, and is often given a lien by statute.

§ 35. Restaurants.

A restaurant differs from an inn in that it furnishes only food, and not lodging or shelter. The keeper of a restaurant is not an innkeeper, nor is he engaged in a public employment.¹⁰ The extent of liability of the keeper of a restaurant will be examined later.¹¹

§ 36. Theatres.

A public theatre differs from an inn both in the nature of the entertainment furnished, and also in that what is furnished is not a necessity of life. For this reason the manager of a theatre is not engaged in a public employment. As Sir James Mansfield said,¹² "theatres are not absolute necessities of life, and any person may stay away who does not approve of the manner in which they are managed." "Theatres are not necessities of life, and the proprietors of them may manage their business in their own way."¹³

Theatres are usually regulated by statute.¹⁴ The extent of liability of the manager will be considered later.¹⁵

§ 37. Sleeping cars and steamboats.

Certain cars on railroad trains have characteristics similar to inns; for instance, sleeping cars and dining cars. But

⁹ *Toms v. Luckett*, 5 C. B. (Eng.) 23, 38 (1847); *Davis v. Gay*, 141 Mass. 531, 6 N. E. 549 (1886); *Shearman v. Iroquois H. & A. Co.*, 42 N. Y. Misc. 217, 85 N. Y. Supp. 365 (1903).

¹⁰ *La Salle R. & O. House v. McMasters*, 85 Ill. App. 677 (1899); *Harris v. Childs' U. D. Co.*, 84 N. Y. Supp. 260 (1903).

¹¹ *Post*, chapter 24.

¹² *Clifford v. Brandon*, 2 Camp. (Eng.) 358, 368 (1809).

¹³ *Pearce v. Spalding*, 12 Mo. App. 141 (1882).

¹⁴ *Post*, § 325.

¹⁵ *Post*, chapter 25.

though analogous to inns, they lack the essential feature of being provided for the entertainment of the traveller at stopping places on his journey. The rights, duties, and obligations of sleeping car companies are considered later.¹⁶ A steamboat is not an inn, though it supplies board and lodging as well as transportation.¹⁷ It is a common carrier, and the law applying to it is to be sought in the law of common carriers of passengers.

¹⁶ *Post*, chap. 27.

¹⁷ *Clark v. Burns*, 118 Mass. 275 (1875).

CHAPTER IV.

REGULATION AND LICENSE OF PUBLIC HOUSES.

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| § 41. Regulation of public houses permitted.
42. Licenses.
43. Licenses usually granted by local administrative body.
44. Corruption in granting or refusing license criminal. | § 45. License board compelled to act by mandamus.
46. Discretion of board cannot be controlled.
47. Remedy for wrong exercise of discretion.
48. Punishment for violation of the license law. |
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§ 41. Regulation of public houses permitted.

The carrying on of any business may be regulated by the State, so far as such regulation is an exercise of the police power. The keeping of any house of entertainment as a matter of business may therefore be regulated in such a way as to secure the health and morals of the community.¹ So a sailors' boarding house may be regulated by law. "The State, in its sovereign capacity, as *parens patriæ*, is charged with the duty of guarding the interests of the community by protecting the lives, preserving the health and morals, and promoting the happiness of its subjects; and, as a corollary thereto, any employment that tends to subvert the obligation thus imposed may be regulated or prohibited by the Legislative Assembly."² On the same principle are justified the laws regulating places of public amusement.³

¹ Commonwealth v. Muir, 38 Wkly. Notes Cas. (Pa.) 328 (1896).

² Moore, C. J., in White v. Holman, 44 Or. 180, 74 Pac. 933 (1904).

³ Greeneberg v. Western Turf Assoc., 140 Cal. 357, 73 Pac. 1050 (1903); People v. King, 110 N. Y. 418, 18 N. E. 245, 6 Am. St. Rep. 389, 1 L. R. A. 293 (1888); Grannan v. Westchester Racing Assoc., 16 N. Y. App. Div. 8, 44 N. Y. Supp. 790 (1897).

In the case of an inn, an additional power of regulation exists in the public nature of the innkeeper's employment. "It is a matter of great public concernment that those who keep houses of public entertainment should be fit and proper persons, that the persons and property of travellers may be safe; that they should be required to make suitable provision for their accommodation, and their rates be known and fixed." ⁴

Regulations of houses of public entertainment are therefore common, and will be found collected and commented upon in a later chapter.

The right to keep an inn was unrestricted at common law. The right to maintain an inn has never been regarded as a franchise, and neither king's patent nor act of Parliament could give the subject more right to become an innkeeper than the law already gave him.⁵

§ 42. Licenses.

The power to regulate inns is frequently exercised by requiring them to be licensed. This is a proper exercise of the power of regulation, and a license may be required by any body upon which the power to make regulations has been conferred.⁶

§ 43. License usually granted by local administrative body.

The granting of licenses to innkeepers or other keepers of

⁴ Ormond, J., in *State v. Cloud*, 6 Ala. 628, 630 (1844).

⁵ *Rex v. Collins*, Palmer, 367, 373, 2 Rolle, 345 (1623); *Stephens v. Watson*, Salk. 45 (1701). An alehouse must be licensed by 5 & 6 Ed. 6, c. 25; but "this statute extends not to inns, for they are for lodging of travellers; but if an inn degenerate to an alehouse by suffering disorderly tippling, etc., it shall be deemed as such." *Stephens v. Watson*, *supra*. Two of the judges in *Rex v. Collins*, *supra*, thought that "in ancient times a common innkeeper should have common license in eyre," and a license of the time of King John was cited; but this was shown to have been a license *hospitari terram*, that is, to farm out the land of a tenant in capite.

⁶ As a municipal corporation. *Russellville v. White*, 41 Ark. 485 (1883). In some States all inns must be licensed. *Lord v. Jones*, 24 Me. 439, 41 Am. Dec. 391 (1844); *State v. Fletcher*, 5 N. H. 257 (1830); *State v. Stone*, 6 Vt. 295 (1834). In others a license is necessary only if liquor is sold. *People v. Murphy*, 5 Parker Cr. R. 130 (N. Y. 1861); *McClure v. Krumbholz*, 9 Pa. Dist. R. 544, 31 Pittsb. Leg. J. (N. S.) 3, 14 York Leg. Rec. 31 (Pa. 1900).

houses of public entertainment is usually confided to some local administrative body, such as a county court or licensing board, or the mayor or aldermen of a city. The act of such a board is an administrative rather than a legislative act, and the power to license conferred upon it is therefore not an unconstitutional delegation of power. Where an appeal lies from such a body to a court, it is not a judicial but an administrative appeal, and the court does no more than reëxamine the evidence already offered to see that the board used its discretion fairly.⁷

§ 44. Corruption in granting or refusing license criminal.

Such a body in granting or refusing a license is exercising a public duty, and may be indicted if it acts corruptly; but it cannot be called to account for an error committed *bona fide*. Thus where a license had been erroneously granted to a person to sell liquors at an inn, and the commissioners were indicted for granting it, they were held not guilty of a crime, where the evidence did not show actual corruption.⁸ Allen, J., said:

“The duties devolved upon commissioners of excise by the act . . . call for the exercise of discretion and judgment, and are, to some extent, discretionary and judicial. The commissioners cannot be coerced in the exercise of their discretion, by mandamus or otherwise, and for a mere mistake are not liable either civilly or criminally. But for an unlawful and corrupt exercise of the powers vested in them they are answerable criminally. They cannot willfully and knowingly violate the law with impunity; and while they are only responsible for good faith and integrity, they cannot from corrupt motives either grant or withhold a license improperly, and shield themselves under the judicial character of their office.

“An indictment for willfully and corruptly granting a license to a person to sell spirituous liquors as an innkeeper, the commissioners knowing that the applicant was not a man of good moral character, nor a person of sufficient ability to keep a

⁷ In *re Stedman*, 14 Phila. 376, 37 Leg. Int. 444 (Pa. 1880).

⁸ *People v. Jones*, 54 Barb. (N. Y.) 312 (1863).

tavern, was sustained, on demurrer, in *The People v. Norton*,⁹ and the reasoning of Judge Willard is entirely conclusive. . . . The offence consists in the motive and intent with which the act was done. The mere granting of a license which a court or jury might say ought not to have been granted, is not an offence; but the jury must be able to say, from the evidence, that the commissioners, or such as are pronounced guilty, knew, at the time, that it was not a proper case for a license under the statute, and nevertheless granted it in willful disregard of the statute; that is, that they knowingly and purposely disregarded the statute. If they acted in good faith, although erroneously, they cannot be punished."

§ 45. License board compelled to act by mandamus.

In consequence of its public duty to pass on licenses, a board which refuses to act on licenses altogether may be compelled to do so by mandamus.¹⁰ And it must act *bona fide* on the question whether a certain applicant is entitled to a license or not. It cannot prohibit a business under the guise of licensing it. As Simpson, J., well said in *City of Louisville v. Kean*:¹¹

"Taverns are necessary for the convenience of the travelling public. They are authorized, and their privileges and duties prescribed by the law. The county court is the tribunal under the general law to decide on the propriety of their existence at the places proposed, and also of the qualifications of the applicants. But this power is not unlimited and uncontrollable. It must be exercised according to law; otherwise, it might be so exercised as wholly to defeat the legislative intention in regard to such houses, and to prevent their existence altogether.

"They have not the right of prohibition, but only the right to decide how many taverns, having the privilege of selling spirituous liquors, are required within the city for the public

⁹ 7 Barb. (N. Y.) 477 (1849). The learned judge also cited to the same effect, *State v. McDonald*, 4 Harr. (Del.) 555 (1847), and *Russell on Crimes*, 116.

¹⁰ *City of Louisville v. Kean*, 18 B. Mon. (Ky.) 9 (1856).

¹¹ 18 B. Mon. (Ky.) 9 (1856).

accommodation and convenience, and whether the applicants have the proper legal qualifications to entitle them to a license. The existence of such taverns is not only sanctioned but deemed necessary by the general law, and the city authorities have no power to prohibit their existence within the city. . . . It would be a willful abuse of discretion to refuse such a license upon the ground that they intended to prohibit altogether the sale of spirituous liquors by retail within the city, knowing at the same time that they had not the legal power to do it, so far as taverns were concerned."

§ 46. Discretion of board cannot be controlled.

A licensing board has a discretion, however, in granting licenses which ordinarily cannot be controlled, by writ of mandamus or otherwise.¹² In one case, however, it was suggested that "a denial of an application for a license may be such as to constitute an abuse of power, and be subject to review and correction by mandamus."¹³ But this suggestion must be confined to cases where the board either refuses to act altogether or so grossly abuses its discretion as to be clearly corrupt; or perhaps where it acts under a clear mistake of law. This is doubtless the ground on which to rest a late case in Oregon, in which the court allowed the writ though, under the circumstances, this amounted to a control over the court's discretion. The petitioners had been refused by the board of commissioners a license to maintain a sailors' boarding house. Only one such license was granted by the board; and the petitioners' application was refused, not because he was found an unsuitable person, but because the board deemed one such house enough. The court having decided that the board could not

¹² *Inns: City of Louisville v. Kean*, 18 B. Mon. (Ky.) 9 (1856); *State v. Stone*, 6 Vt. 295 (1834). *Theatres: People ex relatione Cumisky v. Wurster*, 14 N. Y. App. Div. 556, 43 N. Y. Supp. 1088 (1897); *People ex relatione Armstrong v. Murphy*, 65 N. Y. App. Div. 123, 72 N. Y. Supp. 473 (1901); *People ex relatione Park Circle Amusement Co. v. Board of Police*, 36 N. Y. Misc. 89, 72 N. Y. Supp. 583 (1901).

¹³ *People v. Wurster*, 14 N. Y. App. Div. 556, 43 N. Y. Supp. 1088 (1897).

legally limit the number of such houses to one, granted a peremptory writ to compel the board to grant petitioners' license.¹⁴ The court said that it was "possible that the petitioners are unworthy and incompetent, and therefore not entitled to a license;" but since the record showed that the refusal was based on the illegal desire of the board to monopolize business, the court affirmed the judgment for a peremptory writ to issue.

The fact that the discretion of different boards in various parts of the State may be differently exercised, and the statute thus operate unequally in different parts of the State, is no legal objection to the exercise of such discretion.¹⁵

§ 47. Remedy for wrong exercise of discretion.

A remedy may be provided by statute in case a license is wrongly refused;¹⁶ but even if no remedy is provided, a person who is refused a license, though the refusal was legally wrong, cannot act without the license if a statute requires the license.¹⁷

§ 48. Punishment for violation of the license law.

For illegally keeping an inn or other house of entertainment without a license, or otherwise in violation of statutory regulation, the ordinary method of punishment is by indictment.¹⁸ The punishment may be inflicted as often as the offence is repeated.¹⁹ It is no defence that the defendant on such an indictment was ignorant of the fact that he had no license,²⁰ or that he carried on the business on account of an employer and not for himself.²¹

Where a license is required before carrying on the business of innkeeper, one carrying on such business without a license can-

¹⁴ *White v. Holman*, 44 Or. 180, 74 Pac. 933 (1904).

¹⁵ *Bancroft v. Dumas*, 21 Vt. 456 (1849).

¹⁶ *Sights v. Yarnalls*, 12 Grat. (Va.) 292 (1855).

¹⁷ *State v. Stone*, 6 Vt. 295 (1834).

¹⁸ *State v. Cloud*, 6 Ala. 628 (1844); *State v. Fletcher*, 5 N. H. 257 (1830).

¹⁹ *State v. Johnson*, 65 Me. 362 (1876).

²⁰ *Commonwealth v. Keatley*, 82 S. W. 232 (Ky. 1904).

²¹ *Winter v. State*, 30 Ala. 22 (1857).

not sue for damage to such business,²² or recover compensation for board furnished,²³ or establish a lien on property of the guest.²⁴

“When a license is required for the protection of the public, and to prevent improper persons from engaging in a particular business, and the license is not for revenue merely, a contract made by an unlicensed person in violation of the act is void.”²⁵ But failure to obtain a license will not protect the innkeeper from the responsibilities of his occupation,²⁶ as, for instance, from indictment for exacting more than the established rates.²⁷

²² *Bonner v. Wellborn*, 7 Ga. 296 (1849); *Trimmer v. Hiscock*, 27 Hun (N. Y.), 31 (1882). The failure of the plaintiff to procure a license must, however, be set up by the defendant, or he cannot take advantage of it. *Ibid.*

²³ *Randall v. Tuell*, 89 Me. 443, 36 Atl. 910 (1897).

²⁴ *Stanwood v. Woodward*, 38 Me. 192 (1854).

²⁵ *Foster, J.*, in *Randall v. Tuell*, *supra*.

²⁶ *Dickerson v. Rogers*, 4 Humph. (Tenn.) 179, 40 Am. Dec. 642 (1843).

²⁷ *State v. Wynne*, 1 Hawks (N. C.), 451 (1821).

TITLE II.

THE PUBLIC DUTY OF INNKEEPERS.

CHAPTER V.

GENERAL PRINCIPLES REGULATING THE DUTY OF PERSONS IN
THE PUBLIC EMPLOYMENT.

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| <p>§ 51. The law of public employment.</p> <p>52. The innkeeper is in a public employment.</p> <p>53. The duty to receive guests.</p> <p>54. The duty to provide adequate facilities.</p> | <p>§ 55. The duty to refrain from discrimination.</p> <p>56. What amounts to unreasonable discrimination.</p> <p>57. The duty to make reasonable charges.</p> <p>58. The duty to receive strangers.</p> |
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§ 51. The law of public employments.

From the very beginning of our law it has been recognized that some kinds of business were of special importance to the public, and that all persons engaged in such business owed the public certain duties. No one could be compelled to enter upon the employment; but if he chose to do so, he thereby undertook the performance of the public duties connected with it. The property which he devotes to the public employment is "affected with a public interest" and ceases to be *juris privati* only.¹ "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He

¹ Lord Hale, *De Portibus Maris*, 1 Harg. Law Tracts, 78.

may withdraw his grant by discontinuing the use; but so long as he maintains the use he must submit to the control.”²

The duty placed upon one exercising a public calling is primarily a duty to serve every man as a member of the public. This primary duty involves for its complete performance that the service should be adequate, that only a reasonable price should be charged for it, and that all members of the public should be served equally and without discrimination.

§ 52. The innkeeper is in a public employment.

The innkeeper has from the earliest time been recognized as engaged in a public employment, and therefore as subject to the duty of one engaged in such an employment. “The person who erects the sign,” the Court of King’s Bench quaintly said in the time of James the First, “charges himself to the commonwealth.”³ If the innkeeper violates his public obligation he must suffer for it;⁴ “because he has made profession of a trade which is for the public good, and has thereby exposed and vested an interest of himself in all the king’s subjects that will employ him in the way of his trade.”⁵

The reason for holding that an innkeeper’s calling is a public one has already been explained;⁶ and it has been forcibly expressed elsewhere as follows: “When the weary traveller reaches the wayside inn in the gathering dusk, if the host turn him away what shall he do? Go on to the next inn? It is miles away, and the roads are infested with robbers. The traveller would be at the mercy of the innkeeper, who might practise upon him any extortion, for the guest would submit to anything almost, rather than be put out into the night.

² Waite, C. J., in *Munn v. Illinois*, 94 U. S. 113 (1876).

³ *Rex v. Collins*, Palmer (Eng.), 373 (1623). Other reports of the same case, Palmer, 367, 2 Rolle, 345, contain substantially the same language.

⁴ Year Book, 39 Hen. 6, 18, pl. 24 (1460), per Moile, J.; Year Book, 22 Ed. 4, 49, pl. 15 (1483); Year Book, 14 Hen. 7, 22, pl. 4 (1499); Anonymous, Keilway, 50, pl. 4 (1503).

⁵ Holt, C. J., in *Lane v. Cotton*, 12 Mod. 472, 484 (1701).

⁶ *Ante*, § 11.

Truly a special law is required to meet this situation, for the traveller is so in the hands of the innkeeper that only an affirmative law can protect him." ⁷

§ 53. The duty to receive guests.

The first public duty of the innkeeper, in which his calling differs from the analogous callings of boarding and lodging-house keepers, and the other callings examined in this volume, is his duty to receive travellers as his guests. The duty will be examined at length in a later chapter.⁸

§ 54. The duty to provide adequate facilities.

Not only must the innkeeper be willing to receive travellers as his guests, he must be prepared to shelter and entertain them. An innkeeper without a roof to cover the heads of his guests or without sufficient food to appease their hunger would be as little regardful of the public obligation under which he acts as the innkeeper who refused admittance to his inn to the weary traveller. It is apparent, therefore, that from the duty to receive necessarily follows the duty to provide adequate facilities. Such facilities include an inn in proper repair, and of sufficient size to supply the demand; sufficient stores of wholesome food and comfortable furniture; and a sufficient number of servants to perform the requirements of service and protection to the guest. The innkeeper's duty in these particulars will be considered at greater length in a later chapter.⁽⁹⁾

§ 55. The duty to refrain from discrimination.

It is clear that the innkeeper can perform his duty to the public only by refraining from discrimination in his treatment of guests. If he gives to one man better service in the line of his business than to another, or serves him at a lower price, he is to that extent fostering the interest of an individual

⁷ Professor Bruce Wyman in 17 *Harvard Law Rev.* 159.

⁸ *Post*, chapter 6.

⁹ *Post*, chapter 14.

against that of the whole public. Each traveller who applies for admittance to an inn does so as a representative of the public, into whose service the innkeeper has entered; and each person equally represents that public, and is equally entitled to all the service which the innkeeper owes. It is only when he steps outside his public calling and performs services not included in the business of innkeeping that he is entitled to act from motives of private interest or friendship. "The public right is a common right, and a common signifies a reasonably equal right. . . . Equality, in the sense of freedom from unreasonable discrimination, being of the very substance of the common right, an individual is deprived of his lawful enjoyment of the common right when he is subjected to unreasonable and injurious discrimination in respect to terms, facilities, or accommodations. . . . Whether unreasonableness of terms, facilities, or accommodations operates as a total or a partial denial of the right, and whether the unreasonableness is in the intrinsic, individual nature of the terms, facilities or accommodations, or in their discriminating, collective and comparative character, the right denied is one and the same common right, which would not be a right if it could be rightfully denied, and would not be common, in the legal sense, if it could be legally subjected to unreasonable discrimination, and parcelled out among men in unreasonably superior and inferior grades at the behest of the servant from whom the service is due. The commonness of the right necessarily implies an equality of right, in the sense of freedom from unreasonable discrimination. . . . What kind of a common right of carriage would that be which the carrier could so administer as to unreasonably, capriciously, and despotically enrich one man and ruin another?" ¹⁰ "A service for the public necessarily implies equal treatment in its performance, when the right to the service is common. Because the institution, so to speak, is public, every member of the community stands on an equality as to the right to its benefit, and therefore the carrier cannot discriminate between

¹⁰ Doe, J., in *McDuffee v. Portland & R. R. R.*, 52 N. H. 430 (1873).

individuals for whom he will render the service. In the very nature, then, of his duty and of the public right his conduct should be equal and just to all." ¹¹

These vigorous opinions were delivered in cases where discrimination by common carriers was in question; but the same public duty which was the foundation of the obligation in these cases binds the innkeeper, and the language used is as applicable to the one employment as to the other. Innkeepers too are forbidden to discriminate between guests; "as they cannot refuse to receive guests, so neither can they impose unreasonable terms upon them." ¹²

§ 56. What amounts to unreasonable discrimination.

Equality of service does not mean identity of service; and if one guest gets service that is reasonably and substantially equivalent to that furnished to another guest, he cannot complain. Some difference is of course necessary. If all the guest chambers in an inn are properly equipped, no one can legally complain because the room assigned to another has more tasteful furniture, or a more attractive outlook from the window; nor can a guest object because he is not assigned to the same table in the dining room as another, or because a particular servant is assigned to another guest rather than to himself. [An inn might doubtless consist of two separate buildings for guests; and if each was properly equipped, no guest could complain that he was assigned to one rather than to the other. While, therefore, an innkeeper could not legally discriminate between guests of different classes or different races he might separate them, putting each class or race into a separate but equally well-equipped building.] ¹³

Even if there is discrimination, it may in some circumstances be justified. A guest might for his own fault, in order to secure

¹¹ Bedle, J., in *Messenger v. Pennsylvania R. R.*, 8 Vroom (N. J.), 531 (1874).

¹² Lord Kenyon, C. J., in *Kirkman v. Shawcross*, 6 T. R. 14, 17 (1794).

¹³ See *Younger v. Judah*, 111 Mo. 303, 19 S. W. 1109, 33 Am. St. Rep. 527 (1892); *West Chester & P. R. R. v. Miles*, 55 Pa. 209 (1867).

the comfort or the safety of other guests, be obliged to be content with inferior accommodations.¹⁴ This principle is expressed by Judge Doe with his usual clearness and vigor:¹⁵

“A certain inequality of terms, facilities, or accommodations may be reasonable, and required by the doctrine of reasonableness, and therefore not an infringement of the common right. It may be the duty of a common carrier of passengers to carry under discriminating restrictions, or to refuse to carry those who, by reason of their physical or mental condition, would injure, endanger, disturb, or annoy other passengers; and an analogous rule may be applicable to the common carriage of goods. Healthy passengers in a palatial car would not be provided with reasonable accommodations if they were there unreasonably and negligently exposed by the carrier to the society of smallpox patients. Sober, quiet, moral, and sensitive travellers may have cause to complain of their accommodations if they are unreasonably exposed to the companionship of unrestrained, intoxicated, noisy, profane, and abusive passengers, who may enjoy the discomfort they cast upon others. In one sense, both classes, carried together, might be provided with equal accommodations; in another sense, they would not. The feelings not corporal, and the decencies of progressive civilization, as well as physical life, health, and comfort, are entitled to reasonable accommodations. Mental and moral sensibilities, unreasonably wounded, may be an actual cause of suffering, as plain as a broken limb; and if the injury is caused by unreasonableness of facilities or accommodations (which is synonymous with unreasonableness of service), it may be as plain a legal cause of action as any bodily hurt, commercial inconvenience, or pecuniary loss. To allow one passenger to be made uncomfortable by another committing an outrage, without physical violence, against the ordinary proprieties of life and the common sentiments of mankind, may be as clear a violation of the common right, and as clear an actionable neglect

¹⁴ *Pendergast v. Compton*, 8 C. & P. (Eng.) 454 (1837).

¹⁵ In *McDuffee v. Portland & R. R. R.*, 52 N. H. 430 (1873).

of a common carrier's duty, as to permit one to occupy two seats while another stands in the aisle."

§ 57. The duty to make reasonable charges.

Another rule clearly following from the general principle that the innkeeper must receive all travellers as his guests is that he is limited to a reasonable compensation for his services; for if he could charge what he pleased, he could make anyone's right to be received valueless by requiring the payment by way of accommodation of a prohibitive amount. The question what compensation the innkeeper is entitled to recover will be discussed in a subsequent chapter.¹⁶

§ 58. The duty to receive strangers.

Under some circumstances the innkeeper in the course of his public service may be obliged to admit to the inn persons who are not and do not intend to become guests. The nature and extent of this duty will be examined later.¹⁷

¹⁶ *Post*, chapter 20.

¹⁷ *Post*, chapter 7.

CHAPTER VI.

DUTY TO RECEIVE GUESTS.

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| § 61. The innkeeper must receive all who apply.
62. Duty owed to travellers only.
63. Who is a traveller.
64. Duty to receive persons incapable of contracting.
65. Restriction of accommodation to certain classes.
66. Reception may be demanded at night. | § 67. Innkeeper must be notified of traveller's desire to be received.
68. Innkeeper's duty to receive goods with the guest.
69. Tender of price of accommodation.
70. Remedy for refusal to receive.
71. End of obligation to receive. |
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§ 61. The innkeeper must receive all who apply.

The fundamental duty of the innkeeper to the public, as a person engaged in a public employment,¹ is to receive for entertainment in his inn all travellers who properly apply to be admitted as guests.² This duty is not absolute, as will be seen;³ but, subject to the excuses later examined, it binds every keeper of a common inn from the time he opens his doors to the public.

§ 62. Duty owed to travellers only.

The inn is established for travellers, and it is such persons only who are the necessary objects of the public solicitude. One who is not a traveller does not need the inn to protect him,

¹ *Ante*, §§ 11, 51.

² *Willis v. McMahon*, 89 Cal. 156, 26 Pac. 649 (1891); *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837); *Adams v. Freeman*, 12 Johns. (N. Y.) 408, 7 Am. Dec. 327 (1815); *Commonwealth v. Mitchell*, 2 Parsons (Pa.), 431, 1 Phila. 63 (1850); *Rex v. Ivens*, 7 Car. & P. (Eng.) 213 (1835); *Hawthorne v. Hammond*, 1 Car. & K. (Eng.) 404 (1844); *Rex v. Collins, Palmer*, 363, 373, 2 Rolle, 345 (Eng. 1623); *Rex v. Smith*, 65 J. P. 521 (Eng. 1901).

³ *Post*, chapter 8.

for he can provide a home for that purpose. The public duty of the innkeeper is therefore owed to travellers only, and no one who is not a traveller can demand to be received at an inn.⁴

Thus in the leading case on the law of innkeepers⁵ the court said: "Common inns are instituted for passengers and way-faring men; for the Latin word for an inn is *diversorium*, because he who lodges there is *quasi divertens se a via*; and so *diversoriolum*. And therefore if a neighbor, who is no traveller, as a friend, at the request of the innholder lodges there, and his goods be stolen, etc., he shall not have an action; for the writ is *ad hospitandos homines, etc., transeuntes in eisdem hospitantes*." And though the philology of the court may be questionable, its law is accurate.

§ 63. Who is a traveller.

A friend of the innkeeper who calls upon him socially is not a traveller;⁶ and it seems that in general one who lives in the same town will not be a traveller. In an old case it was said that if an innkeeper invites one to supper, and the night being far spent he invites him to stay all night, such a guest is no traveller.⁷

But it is entirely possible for an inhabitant of the town to be a traveller when he comes to the inn; and the tendency of the modern cases is to be very liberal in regarding one who desires the services of the innkeeper as a traveller, in spite of his residence in the same town. Certainly a man to be a traveller does not need to be at the time engaged in a long or merely occasional journey.⁸ Where, for instance, a man on his way from his city office to his suburban home, stopped at an inn

⁴ *Rex v. Luellin*, 12 Mod. 445 (1700); *Curtis v. Murphy*, 63 Wis. 4, 22 N. W. 825 (1885).

⁵ *Calye's Case*, 8 Coke, 63 (1584).

⁶ *Southcote v. Stanley*, 1 H. & N. (Eng.) 247 (1856).

⁷ *Carr's Case*, 1 Roll. Abr. 3, pl. 4 (1583).

⁸ *Atkinson v. Sellers*, 5 C. B. N. S. (Eng.) 442 (1858).

to get dinner he was held to be a traveller.⁹ In that case Mr. Justice Kennedy said:

“Any person who was neither an inhabitant of the house nor a private guest of the innkeeper or his family, but who came into the house as a guest to get such accommodation as is afforded and he was willing to pay for, was a traveller. It does not seem to me to make any difference whether his journey be a long or a short one.”

And in a leading case in Connecticut the court said:

“A townsman or neighbor may be a traveller and therefore a guest at an inn as well as he who comes from a distance, or from a foreign country. If he resides at the inn, his relation to the innkeeper is that of a boarder; but if he resides away from it, whether far or near, and comes to it for entertainment as a traveller and receives it as such, paying the customary rates, we know of no reason why he should not be subjected to all the duties of a guest, and entitled to all the rights and privileges of one. In short, anyone away from home, receiving accommodations at an inn as a traveller, is a guest.”¹⁰

A man who takes a walk and just before reaching home goes into an inn to get a drink is not a traveller, and cannot demand the accommodation he seeks;¹¹ but if in the course of a long walk for pleasure he stops on his way for refreshment at an inn, he is entitled to be entertained; if he is *bona fide* in the course of travelling from one place to another he is none the less a traveller because the purpose of his journey is merely pleasure.¹²

§ 64. Duty to receive persons incapable of contracting.

The innkeeper's obligation to receive is not confined to the reception of guests with whom he can make a binding contract. A married woman or ^Aan infant requires the services of an innkeeper during a journey as much as another, and the interest

⁹ Orchard v. Bush [1898], 2 Q. B. (Eng.) 284, 289.

¹⁰ Walling v. Potter, 35 Conn. 183 (1868).

¹¹ Murphy v. Innes, 11 So. Australia, 56 (1877).

¹² Taylor v. Humphreys, 30 L. J. M. C. 242 (Eng. 1861).

of the public is just as fully involved in ^{his} their comfort and protection. A married woman or an infant ^{may} therefore demand admittance to an inn.¹³ This has been laid down, to be sure, with the proviso that the innkeeper does not know that the infant's guardian objects to the infant becoming a guest;⁽¹⁴⁾ but this proviso must be confined to a case where the guardian is himself present or at least has made other sufficient provision for the infant; for it is clear that the innkeeper must not leave the infant to starve in the street, even if the guardian objects to his being received.

A charge of Lord Abinger to a jury in the case of *Proctor v. Nicholson*¹⁵ looks at first sight as if the innkeeper need not receive a person incapable of contracting; he said, "the landlord of an inn may supply whatever things the guest orders, and the guest is bound to pay for them, provided that the guest be possessed of his reason, and is not an infant. In either of these latter cases the landlord must look to himself." But the meaning appears to be that the landlord in such a case must take care that the articles supplied are necessities, as otherwise he cannot recover. The passage does not really signify that the landlord may refuse to receive an infant as guest.

§ 65. Restriction of accommodation to certain classes.

It is uncertain on the authorities how far an innkeeper may consent to receive only a certain class of guests. It is no doubt competent for an innkeeper to fix the character of his entertainment so high that his reasonable charges will shut out all but wealthy or well-to-do patrons. "He does not absolutely engage to receive every person who comes to his house, but only such as are capable of paying a compensation suitable to the accommodation provided."¹⁶

If, however, a person applies for such accommodation and is

¹³ *Watson v. Cross*, 2 Duv. (Ky.) 147 (1865).

¹⁴ *Ibid.*

¹⁵ 7 Car. & P. (Eng.) 67, 69 (1835).

¹⁶ *Abbott, C. J.*, in *Thompson v. Lacy*, 3 B. & Ald. 283, 285 (1820).

prepared to pay the price demanded, the innkeeper could hardly refuse to receive the guest on the ground that he was a poor man, and ought not to afford such an entertainment. Nor it would seem could he justify a refusal to receive a guest on the ground that he belongs to an unpopular race or profession. It is said, to be sure, in *State v. Steele*,¹⁷ that a person who would be obnoxious to all the other guests might be excluded, and this opinion would justify the exclusion of a person because he belonged to an unpopular race or was of a despised color. It is not likely, however, that the law would permit an innkeeper to tender his house for the use only of members of a certain race, or to persons of a certain color; yet in *Johnson v. Midland Railway*¹⁸ Baron Parke said: "A man may keep an inn for those persons only who come in their own carriages." This doctrine is a very doubtful one; but it is doubtless competent for an innkeeper to entertain guests of different classes in different rooms or require them to eat at separate tables, provided each gets reasonable accommodations.¹⁹

§ 66. Reception may be demanded at night.

While it is clear that an inn may be closed at reasonable hours during the night,²⁰ it seems also clear that a traveller actually reaching the inn while it is closed may wake the innkeeper and demand admittance. This was rightly assumed to be the law by Baron Parke in an English case.²¹

§ 67. Innkeeper must be notified of traveller's desire to be received.

The burden appears to be on the applicant to give notice to the innkeeper that he desires to be received as a guest. Thus where a person was travelling at night, and came to an inn after it was shut up for the night, and knocked, it was held that the

¹⁷ 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

¹⁸ 4 Exch. (Eng.) 367, 371 (1849).

¹⁹ *Post*, § 167.

²⁰ *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869).

²¹ *Hawthorne v. Hammond*, 1 C. & K. (Eng.) 404 (1844); *Acc. Rex v. Ivens*, 7 Car. & P. (Eng.) 213 (1835).

innkeeper must, in order to be liable for not admitting the guest, have heard the knocking, and in addition must reasonably have concluded that the person was a *bona fide* guest. Parke, B., said, in charging the jury:

“There is no doubt that the law is, that a person who keeps a public inn is bound to admit all persons who apply peaceably to be admitted as guests. You will therefore have to say whether you are satisfied that the noise made by the plaintiff’s brother was really heard by the defendant; and if so, whether you think that she ought to have concluded from it that the persons so knocking at the door were persons requiring to be admitted as guests, or whether she might have concluded that they were drunken persons, who had come there to make a disturbance. You will take the case into your consideration, and find, by your verdict, whether you think that the noise made at the door implied that the persons who made it wanted to be admitted as guests or not.”²²

§ 68. Innkeeper’s duty to receive goods with the guest.

An innkeeper must certainly receive with the guest all goods which could properly be called baggage; but it would seem that his obligation goes further, and that he must receive all that the guest brings with him to the inn, provided it is not dangerous or a nuisance. In *Broadwood v. Granara*,²³ Baron Parke said: “An innkeeper has a lien on such goods only as he is compelled to receive with his guest. Could he be indicted for not receiving a pianoforte? It might be a nuisance to persons in his house.” This expression is probably too large. An innkeeper could not base his refusal on the fact that the goods might become a nuisance, if he had power by regulation to prevent such use as would be harmful; and it is submitted that in the unusual case where a person travels with a piano he should be permitted to bring it with him to the inn (unless it is so heavy

²² *Hawthorne v. Hammond*, 1 C. & K. (Eng.) 404 (1844).

²³ 10 Exch. (Eng.) 417, 420, 24 L. J. Ex. 1, 1 Jur. N. S. 19, 3 W. R. 25, 3 C. L. R. 177 (1854).

or unwieldy that the innkeeper with his reasonable supply of servants cannot handle it); while of course the innkeeper may, by regulation, provide that it shall not be used at unreasonable hours. In the later case of *Robins v. Gray*,²⁴ a guest was thought to be entitled to bring with him a sewing machine; and Lord Esher, M. R., said: "If a traveller comes to an inn with goods which are his luggage—I do not say his personal luggage, but his luggage—the innkeeper, by the law of the land, is bound to take him and his luggage in. The innkeeper cannot discriminate and say that he will take in the traveller but not his luggage. If the traveller brought something exceptional which is not luggage—such as a tiger or a package of dynamite—the innkeeper might refuse to take it in; but the custom of the realm is that, unless there is some reason to the contrary in the exceptional character of the things brought, he must take in the traveller and his goods."

Whether an animal which is not dangerous, like a dog, could be refused on the ground that there are no facilities at the inn to prevent the dog from becoming a nuisance to the guests is more doubtful. It could not be restrained from annoyance by a regulation, like a piano; and on the whole it would seem that unless the inn has, or, considering the nature of its business, ought to have, peculiar facilities for caring for animal pets they may be excluded from the inn and placed in the stable.²⁵

In order to demand admittance for the goods he brings the guest is not bound to prove them his own. A guest may come to an inn with the goods of another, and the ownership of the goods is no business of the innkeeper. "He has not to inquire whether the goods are the property of the person who brings them or of some other person. If he does so inquire, the traveller may refuse to tell him, and may say, 'What business is that of yours? I bring the goods here as my luggage, and I insist upon your taking them in;' or he may say, 'They are not my property, but I bring them here as my luggage, and I insist

²⁴ [1895] 2 Q. B. 501.

²⁵ See *post* § 96.

upon your taking them in;' and then the innkeeper is bound by law to take them in." ²⁶ The innkeeper may undoubtedly refuse to receive goods known to him to be stolen when they are brought to the inn by the thief; but in the ordinary case he need not and cannot investigate the question of title.

§ 69. Tender of price of accommodation.

The innkeeper is not bound to receive the guest until the price of the accommodation is tendered.²⁷ But the necessity of tender may be, and usually is, waived in practice. Thus, if the inn is open and the traveller enters it and makes his desire to become a guest known to the innkeeper, the latter must request a tender if he means to insist upon it as a condition of receiving a guest; while if the inn is closed, or access to it is refused to the traveller, he is injured by refusal to receive him before the time has come for him to make a tender.²⁸

§ 70. Remedy for refusal to receive.

An innkeeper is indictable for illegal refusal to receive a guest;²⁹ or the party wrongly refused accommodation may bring an action on the case to recover damages for the refusal.³⁰

§ 71. End of obligation to receive.

The innkeeper may put an end to his duty to receive guests by going out of the business of innkeeping.³¹ He is not obliged to continue in the business merely because he has once undertaken it.³² But his giving up the business must be *bona fide*;

²⁶ Lord Esher, M. R., in *Robins v. Gray* [1895], 2 Q. B. 501.

²⁷ *Fell v. Knight*, 8 M. & W. 269, 10 L. J. Ex. 277, 5 Jur. 554 (Eng. 1841); *Pinchon's Case*, 9 Coke, 87 (1611).

²⁸ *Fell v. Knight*, *supra*.

²⁹ *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Commonwealth v. Mitchell*, 2 Parsons (Pa.), 431, 1 Phila. 63 (1850); *Rex v. Ivens*, 7 Car. & P. (Eng.) 213 (1835).

³⁰ Anonymous, *Godbolt* (Eng.), 345, pl. 440 (1623); *Rex v. Collins, Palmer* (Eng.), 373 (1623); *Cornell v. Huber*, 102 N. Y. App. Div. 293, 92 N. Y. Supp. 434 (1905); *Whiting v. Mills*, 7 Up. Can. Q. B. 450 (1849).

³¹ Anonymous, *Godbolt*, 345, pl. 440 (1623); *Rex v. Collins, Palmer*, 373 (1623).

³² *Conklin v. Prospect Park Hotel Co.*, 1 N. Y. Supp. 406 (1888).

if he merely pretends to give up the business, while really continuing to receive guests, he will remain liable.³³ “If an innkeeper taketh down his sign, and yet keepeth an hosterie, an action upon the case will lie against him, if he do deny lodging unto a traveller for his money.”³⁴

³³ *Rex v. Collins, Palmer*, 373 (1623).

³⁴ *Anonymous, Godbolt*, 345, pl. 440 (1623).

CHAPTER VII.

THE DUTY OF AN INNKEEPER TO PERSONS WHO ARE NOT GUESTS.

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| § 81. Innkeeper's responsibility to third persons for acts of guests.
82. Duty to admit strangers not seeking entertainment.
83. Stranger coming to inn for convenience of guest.
84. Stranger coming for a social call on guest.
85. Stranger coming by appointment to do business with guest. | § 86. Stranger coming to solicit patronage.
87. Discrimination between carriers coming to solicit patronage.
88. Right of stranger forfeited by misconduct.
89. Stranger entering to make inquiry. |
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§ 81. Innkeeper's responsibility to third persons for acts of guests.

The innkeeper is not a guarantor of his guests' solvency or honesty in their dealings with third persons. He cannot be held responsible, for instance, for a bill incurred by the guest for washing his linen.¹ Such responsibility may, however, be imposed upon the innkeeper by statute. Thus under a statute by which the occupier of any house where a dog is permitted to live is regarded as the owner, the innkeeper is liable for injuries caused by a guest's dog which the guest had kept at the inn.²

§ 82. Duty to admit strangers not seeking entertainment.

One who is not a guest or intending immediately to become a guest, has, generally speaking, no right to enter or remain in the inn against the objection of the innkeeper.³ There are, to be sure, in every inn, "public rooms," so called, and persons not

¹ Callard v. White, 1 Stark. 171 (Eng. 1816).

² Gardner v. Hart, 44 W. R. 527 (Eng. 1896).

³ State v. Whitby, 5 Harr. (Del.) 494 (1854).

guests are often in the habit of resorting to such rooms; but they are admitted to them only by the consent of the innkeeper. If that consent is withdrawn, one who is not a guest has no more right to enter a public room in an inn than he has to enter the private room of a guest. "Barring the limitation imposed by holding out inducements to the public to seek accommodation at his inn, the proprietor occupies it as his dwelling house, from which he may expel all who have not acquired rights, growing out of the relation of guest."⁴

The same idea was vigorously expressed by Judge Parsons, in *Commonwealth v. Mitchell*:⁵ "If it should be held, as was contended on the argument, that because a man keeps a public house all who choose have a right to enter and occupy the hall or bar-room, or even the public parlor in the hotel, and that the proprietor has not a right to request them to leave, and if they do not, and he gently lays his hands on one to lead him out, he is guilty of an assault and battery, but few persons would be found as lodgers in public houses. For where is the distinction to be drawn? If one may enter the inn and tarry there, all may. The pickpocket, the burglar, gambler and horse thief, can come and take his seat by the side of the most virtuous man in the community in the gentleman's common parlor at the hotel, and the proprietor cannot eject him (no matter how annoying it may be to the guest) without being indicted for an assault and battery. Nor would the line of distinction be drawn here—the filthy and unclean would claim the same right. It is only necessary to state such a proposition to show its absurdity."

§ 83. Stranger coming to inn for convenience of guest.

While the general principle just stated is unquestioned, there are certain cases in which a stranger may desire to enter the inn, not merely for his own pleasure or business, but because

⁴ *Avery, J.*, in *State v. Steele*, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

⁵ 2 Parsons (Pa.), 431, 1 Phila. 63 (1850).

the convenience of a guest of the inn calls him there. While no right to enter the inn can be based on his own claim, he can under certain circumstances claim to be exercising a right of the guest. Where such is the case it would seem that his right to admittance is as clear as the right of a guest. It must be borne in mind, however, that in order to show a right of admittance he must base his claim on a right of the guest whom he comes to see.

Even in such a case there is some authority for saying that he cannot legally enter the inn against the objection of the innkeeper. Judge Parsons, in *Commonwealth v. Mitchell*,⁶ was of opinion that a person desiring to call upon a guest, even if he had been sent for by the guest, could not legally resist exclusion by the innkeeper, and that the innkeeper might use any force that was necessary to exclude him without being liable to an action for assault and battery, though he might be liable to an action on the case for refusal. This opinion, however, is probably incorrect. If, either in his own right or the right of a guest, the party is permitted by the law to enter the inn, the innkeeper can probably not justify the use of force to exclude him.

§ 84. Stranger coming for a social call on guest.

Though there is no direct authority in favor of such a right, it seems that a stranger coming to make a social call upon the guest at the guest's request would have a right to be admitted for that purpose. Any other rule would deprive the guest of one privilege necessary for his comfort while at the inn. If, however, the guest has not previously requested the stranger to call, it seems clear that the stranger cannot object if he is denied admittance to the inn and the guest is not informed of his presence.⁷

§ 85. Stranger coming by appointment to do business with guest.

In the ordinary case it is tolerably clear that a stranger who

⁶ 2 Parsons (Pa.), 431, 1 Phila. 63 (1850).

⁷ *Commonwealth v. Mitchell*, 2 Parsons (Pa.) 43, 10 Phila. 63 (1850).

comes by appointment to do business with a guest has a right to be admitted. "It is conceded," said Parker, J., in *Markham v. Brown*,⁸ "that he may be bound to permit the entry of persons who have been sent for by the guest." And even those courts which are most reluctant to permit the entrance of a stranger, do in fact, concede the right to such persons. To be sure, if the visitor after his entrance misconducts himself he may be excluded. As Judge Avery said in *State v. Steele*:⁹

"If it be conceded that the prosecutor went into the hotel at the request of a guest, and for the purpose of conferring with the latter on business, still, in any view of the case, if, after entering, he engaged in 'drumming' for his employer when he had been previously notified to desist in obedience to a regulation of the house, the defendant had a right to expel him if he did not use more force than was necessary. . . . The guest, by sending for a hackman, could not delegate to him the right to do an act for which even the guest himself might lawfully be put out of the hotel."

And Judge Parsons said forcibly in *Commonwealth v. Mitchell*:¹⁰ "Can it be said that . . . the proprietor is bound to let every felon in the city enter his house, find access to his chambers, to visit a guest who happens to lodge there, and who has thus sought the lodging to enable his associates in crime to enter the house for the purpose of robbing the other guests, or stealing the valuables from the hotel? Such a thing could not be tolerated."

As to the general right of the guest to have a proper person visit him at the inn on business, the same learned justice in the same case appears to recognize it, while qualifying it by his doctrine, already stated, that the innkeeper might lawfully use force to keep the visitor from making use of this right. "When a guest has been admitted to a hotel and has taken a room, if any one calls to see him upon business, fair dealing would seem

⁸ 8 N. H. 523, 31 Am. Dec. 209 (1837).

⁹ 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

¹⁰ 2 Parsons (Pa.), 431, 1 Phila. 63 (1850).

to require that the proprietor should communicate the intelligence to the guest, and if he consented to see the visitor, let him enter. But this, I apprehend, would be more by courtesy than a sheer claim of right. And if the proprietor of the house should refuse to suffer the visitor to come in, or if he had entered should request him to depart, and on his refusal, gently lead him out, I am not prepared to say he would be guilty of an assault and battery for so doing. That the proprietor would be liable to an action, both to the guest and the visitor for any injury either might sustain in consequence thereof, I have no doubt. And probably might be liable to an indictment upon the same principle he would be for refusing to entertain a traveller when he had room. But because one should allege he had business with a guest, and the guest desire to see a visitor that was obnoxious to the keeper of the house, and therefore any one can enter the hotel on such a pretext and stay as long as he pleases without the proprietor possessing the power to remove him, is a principle which cannot be sanctioned on any clear legal ground. The guest is but an occupier of his lodgings at the will or sufferance of the proprietor, and necessity requires that he who has charge of that house should determine whether visitors who may desire to call upon a lodger are proper persons to be admitted within his chambers; otherwise, under such a pretext, thieves and robbers might gain admittance and rob his other guests of much that is valuable. Any different rule would expose every hotel keeper to an imminent risk."

§ 86. Stranger coming to solicit patronage.

★ Where a stranger seeks admittance to an inn for the purpose of soliciting the patronage of guests, he may clearly be excluded from the inn. Indeed, as is pointed out in the case of *State v. Steele*,¹¹ it may under some circumstances be the innkeeper's duty to exclude such persons, for he is bound to protect the guest against troublesome tradesmen. The innkeeper is certainly under no obligation to furnish his inn as a free place of

¹¹ 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

business for all tradesmen who wish to use it for that purpose. If the privilege of carrying on business in the inn is a valuable one, there is no reason why the innkeeper should not secure for himself that benefit. Accordingly the innkeeper may either conduct himself, or make an exclusive contract with another to conduct a barber shop, news stand, or other business in the inn.

“An innkeeper has unquestionably the right to establish a news stand or a barber shop in his hotel, and to exclude persons who come for the purpose of vending newspapers or books, or of soliciting employment as barbers; and, in order to render his business more lucrative, he may establish a laundry or a livery stable in connection with his hotel, or contract with the proprietor of a livery stable in the vicinity to secure for the latter, as far as he legitimately can, the patronage of his guests in that line for a per centum of the proceeds or profits derived by such owner of vehicles and horses from dealing with the patrons of the public house. After concluding such a contract, the innkeeper may make, and after personal notice to violators, enforce, a rule excluding from his hotel the agents and representatives of other livery stables who enter to solicit the patronage of his guests; and where one has persisted in visiting the hotel for that purpose, after notice to desist, the proprietor may use sufficient force to expel him if he refuse to leave when requested, and may eject him, even though on a particular occasion he may have entered for a lawful purpose, if he does not disclose his true intent when requested to leave, or whatever may have been his purpose in entering, if he in fact has engaged in soliciting the patronage of the guests. . . . The proprietors of the public house might legitimately share in the profits of any such incidental business, as furnishing carriages, buggies, or horses to the patrons, and for that purpose had as full right to close their house against one who attempted to injure the business in which they had such interest as the owner of a private house would have had, and this view of the case is consistent with the doctrine enunciated in *Markham v. Brown*.”¹²

¹² Avery, J., in *State v. Steele*, *supra*.

§ 87. Discrimination between carriers coming to solicit patronage.

There is, however, one case in which the right of the innkeeper to exploit the privilege of using the inn for his own benefit may, it seems, be limited. In any business not connected with travel he may do as he pleases and the guest has no right to complain; but as the inn is established for the comfort and safety of travellers, and the innkeeper is under a public duty to secure that comfort and safety, he owes a fiduciary protection towards his guest in all that concerns travelling, and he is, therefore, not permitted to do anything which might bring his own private interests into competition with the interest of his guest in any matter that is connected with the guest's journey. The departure from the inn, in continuation of the guest's journey, is, therefore, a matter in which the innkeeper must act solely for the benefit of the guest, and cannot permit his own interest in any way to come into competition with the guest's interest. Any arrangement, therefore, by which he permits one carrier to enter the inn and solicit the patronage of the guest, in connection with his departure, and refuses to permit other competing carriers to do the same, is not permitted to him; for the guest, finding his patronage solicited by a carrier, will naturally conclude that he must deal with that carrier if he is to get away from the inn, and even if he knows that there is another competing carrier he will be under an inducement to deal with the first carrier owing to the greater convenience of so doing. This advantage extended by the innkeeper to one carrier over another will enable the favored carrier to obtain a larger compensation for his services from the guest than he could get if the competition were equal, and this is detrimental to the interest of the guest. It is true that the favored carrier is obliged to carry the guest at a reasonable rate, but that reasonable rate is not a rate that is rigidly fixed; and a rate considerably higher than a competitive rate may nevertheless be reasonable. If, as may usually be the case, the carrier is obliged to pay the innkeeper a certain sum for his privilege, he will be entitled to have the amount so paid included in the rate he

may charge, since it seems a part of his legitimate expenses. Since, therefore, the innkeeper in giving the exclusive privilege of soliciting patronage to one carrier is acting to the detriment of his guest in a matter which concerns the continuation of his journey, the innkeeper's action is illegal, and the competing carrier has a right to demand admittance for the purpose of soliciting the patronage of the guests. This right it will be noticed is based upon the right of the guest not to be subjected to a monopoly, and the carrier, therefore, will have no right to demand admittance if all carriers are equally excluded from the inn.

The leading case on this point is *Markham v. Brown*,¹³ in which it was held that an innkeeper who admitted to his inn the representative of one line of stage coaches which passed through the town could not lawfully exclude the representative of another competing line. In his opinion Parker, J., said:

“As he is bound to admit travellers, under certain limitations, he may likewise be held, under proper limitations, to admit those who have business with them as such. This may be considered as derived from the right of the traveller. It is conceded that he may be bound to permit the entry of persons who have been sent for by the guest. But we think the rule is not to be limited, in all cases, to this. There may be such connection between travellers and those engaged in their conveyance, that the latter, although not specially sent for, may have a right to enter a common inn; or such that the landlord, if he give a general license to some of those whose business is connected with his guests, in their characters as travellers, cannot lawfully exclude others, pursuing the same business, and who enter for a similar object.

“There seems to be no good reason why the landlord should have the power to discriminate in such cases, and to say that one shall be admitted and another excluded, so long as each has the same connection with his guests—the same lawful purpose

¹³ 8 N. H. 523, 31 Am. Dec. 209 (1837).

—comes in a like suitable condition, and with as proper a demeanor; any more than he has the right to admit one traveller and exclude another, merely because it is his pleasure.

“If one comes to injure his house, or if his business operates directly as an injury, that may alter the case—but that has not been alleged here. And perhaps there may be cases in which he may have a right to exclude all but travellers and those who have been sent for by them. It is not necessary to settle that at this time.

“In the present case it appeared that stage coaches brought their passengers to the plaintiff’s inn from various quarters, and carried them away in different directions. It is understood that Hanover was not a place where the lines of stages or conveyances terminated, and where passengers were left to seek their own conveyance onward, as is often the case in the larger cities; but that the line of stages extended through the place in such manner that travellers might reasonably expect conveyances onward would be tendered for their use.

“The drivers of some of the coaches were accustomed to resort to the plaintiff’s inn, and boarded there.

“Under these circumstances, we see no objection to the first part of the charge to the jury. The defendant had clearly a right to establish a line of stage coaches, and to go to the plaintiff’s inn with travellers, and he might of course lawfully enter it for the purpose of leaving their baggage and receiving his fare.

“And we are of opinion that, so long as others were permitted to do the same, the defendant had an equal and lawful right, notwithstanding any prohibition by the plaintiff, to enter the plaintiff’s inn for the purpose of tendering his coach for the use of travellers, and soliciting them to take passage with him; and for that purpose to go into the common public rooms of the inn, where guests were usually placed to await the departure of the stages, although he was not requested by such guests; provided there was a reasonable expectation that passengers might be there, and he came at a suitable time, in a proper

manner, demeaned himself peaceably, and remained no longer than was necessary, and was doing no injury to the plaintiff.”]

§ 88. Right of stranger forfeited by misconduct.

It is clear that this right, like the right of the guest himself,¹⁴ may be forfeited by the misconduct of the visitor, and may even be denied because of the bad character or bad intentions of the visitor. The language of Judge Parsons to this effect has already been quoted;¹⁵ and to the same effect is the opinion of the New Hampshire Supreme Court in the case of *Markham v. Brown*:¹⁶

“The defendant might forfeit his right by his misconduct, so that the plaintiff might require him to depart, and expel him; and if, by reason of several instances of misconduct, it appeared to be necessary for the protection of his guests or of himself, the plaintiff might prohibit the defendant from entering again, until the ground of apprehension was removed. Thus if affrays or quarrels were caused through his fault, or he was noisy, disturbing the guests in the house, interfered with its due regulation, intruded into the private rooms, remained longer than was necessary after being requested to depart, or otherwise abused his right, as by improper importunity to guests to induce them to take passage with him; the plaintiff would have a right to reform that, and, if necessary, to forbid the defendant to enter, and treat him as a trespasser if he disregarded the prohibition.

“So, if, after a lawful entry of the defendant, he committed an assault upon the plaintiff, or any trespass upon his property, the plaintiff might treat him as having entered for the unlawful purpose, and as a trespasser *ab initio*.”

When a person otherwise having a right to enter is refused admittance because it is suspected that he intends to do wrong after he enters, or because he is a person of bad character or

¹⁴ *Post*, chapters 8, 9.

¹⁵ *Supra*, § 85.

¹⁶ 8 N. H. 523, 31 Am. Dec. 209 (1837).

reputation, the responsibility of the innkeeper is evidently large. So far as the authorities go, the innkeeper may undoubtedly justify exclusion on such a ground. Yet it is a difficult matter to establish a mere evil intention; and in the ordinary case it is the wiser course to admit the applicant, subject to the rules of the inn, and eject him when he violates a rule or does any act justifying exclusion.

§ 89. Stranger entering to make inquiry.

In one class of cases, however, one who is neither a guest nor a person having business with a guest may enter an inn. One may have occasion to make inquiry at the office of an inn either into some matter connected with the business of the inn or even for a letter or message addressed to himself. If all inns had the same accommodations and charged the same prices, persons who desired accommodation would not need to make inquiry before deciding which inn to patronize; or if in each place there was but a single inn there would be no object in such an investigation. But wherever more than one inn is found in a town, the traveller needs information before he can choose which inn to patronize. It must be his right, therefore, before deciding to become a guest, to enter and inquire what room he can get and what price will be charged, and to make such other investigation as is possible. While no decided case has been found in which this subject is discussed, the right is believed to be beyond question; and in the analogous case of a common carrier it has been so held. A person going to a railroad station in order to get a timetable, but not at that time to take a train, has been held to have a right on the premises.¹⁷

It is the custom of inns to receive letters and telegrams addressed to strangers and to keep them a reasonable time to be called for. While of course an innkeeper cannot be compelled to accept such communications, still if he makes

¹⁷ *Bradford v. Boston & M. R. R.*, 160 Mass. 392, 35 N. E. Rep. 1131 (1894).

a practice of doing so (as in fact is true of most innkeepers) it seems to be clear that he must admit to the office persons coming *bona fide* to make inquiries for such communications. This is of course not a duty placed upon the innkeeper by reason of any provision of the law of innkeepers; but it results necessarily from the practice of innkeepers, as it has just been described. An illustration of the importance of this right may be found in the English case of *Strauss v. County Hotel and Wine Company*.¹⁸ In that case a person came to an inn intending to stay overnight, and found waiting for him a telegram summoning him to another city. If the innkeeper as a matter of good business policy consents to receive such messages, he leads travellers to depend upon being admitted to inquire for them; and he cannot therefore refuse to admit them.

¹⁸ 12 Q. B. D. 27, [53 L. J. Q. B. 25, 49 L. T. 601, 32 W. Rep. 170, 48 J. P. 69 (Eng. 1883).]

CHAPTER VIII.

EXCUSES FOR REFUSAL TO RECEIVE A GUEST.

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| § 91. Refusal to receive guest because of lack of accommodation.
92. Refusal to receive objectionable person.
93. Refusal to receive one suffering from contagious disease.
94. Refusal to receive one whose companions have acted improperly. | § 95. Refusal to receive one who comes at improper time.
96. Refusal to receive one who brings an animal.
97. Refusal to receive a rival.
98. Refusal to receive because the inn is unlicensed. |
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§ 91. Refusal to receive guest because of lack of accommodation.

When the innkeeper's accommodation is exhausted, he may refuse to receive an applicant as a guest. If all his sleeping rooms are occupied, he need not admit a guest to sleep in a sitting room, or (in modern times) to share the bedroom of another guest. In an English case an applicant who had been refused admission to an inn because the inn was full sued the innkeeper and proved that the coffee room was unoccupied, and that there was room without overcrowding for the applicant to sleep in a room with another guest. The court held, nevertheless, that he had been rightly refused admission.¹ Lord Alverston, C. J., was of opinion that even if the applicant had asked to occupy the coffee room, he might legally have been refused. Darling, J., said:

"No doubt an innkeeper is bound to provide accommodation for travellers, but he is not to do so at all risks and all costs. He is only bound to provide accommodation so long as his

¹ Browne v. Brandt [1902], 1 K. B. 696, 71 L. J. K. B. 367, 86 L. T. 625, 50 W. R. 654.

house is not full; when it is full he has no duty in that respect. The question then arises, when an innkeeper's house may properly be said to be full. I do not think that the old cases can help one very much, because in olden times people were in the habit of sleeping many in one room, and several in one bed. People who were absolutely unknown to each other would sleep in the same room, as is done in common lodging houses at the present time. Therefore, if we got a definition of 'full' in one of the old cases, I should not be surprised to find that what was called 'full' then, we should now call 'indecent overcrowding.' It is the habit now of people to occupy separate bedrooms, and, having regard to the ordinary way of living at the present time, I think an inn may be said to be full for the purpose of affording accommodation for the night if all the bedrooms are occupied. There might have been a difficulty here if the plaintiff had said, 'I will take your sitting room. I do not want to go to bed. I will sit up all night.' But that difficulty does not arise on the facts of this case. The county court judge has found that the house was full, having regard to modern ways of living. He referred to Chaucer and the Canterbury pilgrims. One need only look at the 'Sentimental Journey' to see how people's habits have altered since the time of Laurence Sterne. I am of opinion that the county court judge's decision was right."

§ 92. Refusal to receive objectionable person.

It has sometimes been laid down broadly that persons who would be so objectionable to the patrons of the house that it would injure the business of the innkeeper to admit them may be excluded; though the reason for exclusion is simply the race of the applicant.² While this is doubtless too broadly stated as a common-law proposition, a person who is in himself reasonably objectionable may be excluded. Thus an innkeeper may excuse the refusal to accept a person as his guest because

² *State v. Steele*, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

he is drunk,³ filthy,⁴ profane,⁵ indecently or improperly behaved,⁶ a common brawler or thief,⁷ or a person of bad reputation;⁸ or if he desires to enter for an unlawful purpose, as to assault an inmate;⁹ or if he attempts to enter by violence.¹⁰ But mere unconventionality of costume is no ground for refusal to receive a guest, so long as the costume is decent. Thus a woman who wore a "rational dress," so called, was held entitled to service from an innkeeper.¹¹

§ 93. Refusal to receive one suffering from contagious disease.

It seems obvious that, for the protection of his other guests, an innkeeper may refuse to receive a traveller suffering from a contagious disease. This seems sufficiently clear, even without the support of decided cases; so clear, indeed, that one would not expect to find the proposition disputed in litigation. Yet in an early English case, where one was indicted for refusing to receive at his inn one suffering from smallpox, the only objection apparently taken, at any rate the objection on account of which the indictment was quashed, was that the applicant was not alleged to have been a traveller.¹²

§ 94. Refusal to receive one whose companions have acted improperly.

The innkeeper cannot refuse to receive a guest or other per-

³ *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837); *State v. Steele*, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890); *Rex v. Ivens*, 7 Car. & P. 213 (Eng. 1835).

⁴ *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837); *State v. Steele*, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

⁵ *State v. Steele*, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

⁶ *Rex v. Ivens*, 7 Car. & P. 213 (Eng. 1835).

⁷ *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837).

⁸ *Goodenow v. Travis*, 3 Johns. 427 (N. Y. 1808).

⁹ *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837).

¹⁰ As by breaking the door. *Goodenow v. Travis*, 3 Johns. (N. Y.) 427 (1808).

¹¹ *Regina v. Sprague*, 63 J. P. 233 (Eng. 1899).

¹² *Rex v. Luellin*, 12 Mod. 445 (1700).

son otherwise admissible because companions of the applicant have previously misconducted themselves.¹³

Thus in a leading case the innkeeper refused to serve an applicant because he belonged to the militia and wore the uniform, and other members of the militia wearing the same uniform had previously misconducted themselves. The innkeeper alleged that he was unable to discriminate between them, and took them all as parties who came there to create a disturbance in the house. This excuse was held insufficient.¹⁴ Emery, J., said:

“The offered testimony would not be admissible unless it logically tended to prove a reasonable cause for such belief. The bill of exceptions states, that some eighty or a hundred men, members of two militia companies, and clad in the uniform of the Maine militia arrived in town on the day named; that ‘more or less’ of them (how many is not stated) went to the defendant’s inn, and there behaved in a disorderly and insulting manner. These plaintiffs, though members of the militia companies, were not of this disorderly party, nor with them. It is not claimed that the plaintiffs were otherwise than sober, orderly and respectable. The only connection shown between them and the disorderly ones was their membership of the same militia companies. It is not even shown they were of the same company. The only similarity in appearance was in the uniform. Such membership was honorable, and there was not in that any reasonable cause to believe the plaintiffs intended insult. The uniform was honorable and the rightful wearing it by the plaintiffs was no reasonable cause for apprehension of insult. We do not know how many of the organization had misbehaved. We have no right to assume the number was large. We ought rather to assume the number was small. It would be illogical and unjust to say, there was reasonable cause to believe that every member of those companies

¹³ *Atwater v. Sawyer*, 76 Me. 539, 49 Am. Rep. 634 (1884); *Markham v. Brown*, 8 N. H. 523, 31 Am. Dec. 209 (1837).

¹⁴ *Atwater v. Sawyer*, 76 Me. 539, 49 Am. Rep. 634 (1884).

meditated misconduct because a small number of them had already misconducted. Yet if there was reasonable cause to fear insult from the plaintiffs, there was equal cause to fear it from every member.

"The defendant's claim that he could not distinguish between the plaintiffs and the others, cannot be admitted against the plaintiffs' right to entertainment. The plaintiffs were not with the others. Their rights cannot be abridged by the similarity in appearance to other persons not present. It was the defendant's duty to discriminate."

§ 95. Refusal to receive one who comes at improper time.

The innkeeper cannot refuse to receive a traveller because he comes late at night. Indeed, the traveller who cannot reach an inn until late is all the more in need of the protection and entertainment it affords. In a case where an innkeeper set up the late arrival of the plaintiff as an excuse for refusal to receive him, Mr. Justice Coleridge said to the jury, "it is next said that he came to the inn at a late hour of the night, when probably the family were gone to bed. Have we not all knocked at inn doors at late hours of the night, and after the family have retired to rest, not for the purpose of annoyance, but to get the people up?"¹⁵ This is not a very conclusive answer to the defendant's contention, but it seems to need no greater consideration.

In the same case the defendant set up, as another excuse, that the plaintiff had been travelling on Sunday; but this was dismissed with the curt answer that travelling on Sunday was not illegal.¹⁶ But even if it had been illegal, the case would have been the same; the fact that a person has been illegally travelling on Sunday does not affect his rights as guest.¹⁷

§ 96. Refusal to receive one who brings an animal.

An innkeeper is of course prepared to receive guests who

¹⁵ *Rex v. Ivens*, 7 Car. & P. (Eng.) 213, 219 (1835).

¹⁶ *Rex v. Ivens*, *supra*.

¹⁷ *Cox v. Cook*, 14 Allen (Mass.), 165 (1867).

drive to an inn, and to entertain his horses as well as himself; but if he insists upon bringing with him other animals as pets it is doubtful how far the innkeeper may be compelled to receive him. Certainly he cannot be obliged to take in an animal which will annoy other guests.

✓ In an English case it appeared that a person who had been in the habit of bringing one or more large dogs with him to an inn, to the annoyance of guests, had been forbidden by the innkeeper to come to the inn with a dog. Notwithstanding this, he demanded admittance, having with him a large dog in leash. The innkeeper refused to admit him, and was indicted for the refusal. The court held that the refusal was justifiable.¹⁸ In the course of his opinion Chief Baron Kelly said: "I do not lay down positively that under no circumstances could a guest have a right to bring a dog into an inn. There may possibly be circumstances in which, if a person came to an inn with a dog and the innkeeper refused to put up the dog in any stable or outhouse, and there were nothing that could make the dog a cause of alarm or annoyance to others, the guest might be justified in bringing the dog into the inn. But it is not necessary to decide any such question. In this case, looking at the previous facts, the number of dogs previously brought, and their kind and behavior, the nature of the right claimed by the prosecutor in his letter,¹⁹ and the size and class of the dog, I think the defendant would have had ample ground for his refusal." Mr. Justice Manisty added that, in his opinion, "a guest cannot under any circumstances, insist on bringing a dog into any room or place in an inn where other guests are." ✓

§ 97. Refusal to receive a rival.

It is sometimes said that an innkeeper is not obliged to entertain a rival who is acting in the interest of his rival inn.

¹⁸ Regina v. Rymer, 2 Q. B. D. 136, 46 L. J. M. C. 108, 35 L. T. 774, 25 W. R. 415, 13 Cox C. C. 378 (1877).

¹⁹ To "follow his inclinations" in bringing dogs, when they were not wet and dirty.

Thus in *Jencks v. Coleman*,²⁰ Story, J., said: "Suppose passengers are accustomed to breakfast, or dine, or sup at his house, and an agent is employed by a rival house, at the distance of a few miles, to decoy the passengers away the moment they arrive at the inn; is the innkeeper bound to entertain and lodge such agent, and thereby enable him to accomplish the very objects of his mission, to the injury or ruin of his own interests? I think not."

It may, however, be doubtful whether an innkeeper can justify the refusal to receive a *bona fide* traveller merely because he intends to act in the interest of a rival inn. If that is his sole purpose in coming to the inn he is not a *bona fide* traveller, and may be refused admittance on that ground; if he is a genuine guest, the innkeeper must receive him, but may prevent him from soliciting custom while a guest. The innkeeper unquestionably has such power,²¹ and by the exercise of it he may sufficiently protect himself.

§ 98. Refusal to receive because the inn is unlicensed.

Though keeping an inn without a license may be illegal, the innkeeper cannot take advantage of this illegality to excuse himself for refusing to receive a guest. The obligation to serve the public attaches to one who is actually keeping a common inn, even if he is in default for not obtaining a license; and the lack of a license is no excuse to an innkeeper for refusal to receive a guest.²² And therefore in an action against one who has acted as an innkeeper it is not necessary to show that he had a license to keep an inn.²³

²⁰ 2 Sumner, 221, Fed. Cas. No. 7,258 (1835).

²¹ Post. § 212.

²² *Atwater v. Sawyer*, 76 Me. 539, 49 Am. Rep. 634 (1884); *State v. Wynn*, 1 Hawks (N. C.), 451 (1821); Anonymous, Godbolt (Eng.), 345, pl. 440 (1623).

²³ Anonymous, Godbolt (Eng.) 345, pl. 440 (1823).

CHAPTER IX.

THE INNKEEPER'S RIGHT TO EJECT ONE WHO HAS BEEN
ADMITTED TO THE INN.

- § 101. Right to eject in general.
 102. Ejection for misconduct.
 103. Ejection for illness.

- § 104. Ejection for refusal to pay.
 105. Ejection of one who has
 ceased to be a traveller.

§ 101. Right to eject in general.

Even after one has been admitted to an inn as a guest he may be ejected for proper cause. By his admission as a guest he is perhaps in a better position to demand the services of the innkeeper than when he first applied for admission; but probably this advantage is merely tactical. While the burden is on one who applies for admission to prove himself entitled to demand it, as soon as he has been received as a guest the burden is placed on the innkeeper to justify the act of ejecting him. But so far as substantive right goes, it is doubtful if the guest gains any by securing admission to the inn. If after his admission circumstances occur which would have justified the innkeeper in refusing to admit him if they had existed when he applied for admission, they will equally justify the innkeeper in ejecting him.

§ 102. Ejection for misconduct.

If the guest after being received misconducts himself so as to annoy the other guests, he may for that cause be ejected from the inn. Thus a guest may be ejected who persists in annoying other guests by soliciting their custom in his business.¹ So one may be ejected who becomes obnoxious to other

¹ State v. Steele, 106 N. C. 766, 11 S. E. 478, 19 Am. St. Rep. 573, 8 L. R. A. 516 (1890).

guests by reason of intoxication.² So a guest may be ejected who makes a disturbance in the inn. "If a man comes into a public house and conducts himself in a disorderly manner, and the landlord requests him to go out, and he will not, the landlord may turn him out. There is no doubt that a landlord may turn out a person who is making a disturbance in a public house, though such disturbance does not amount to a breach of the peace."³ Indeed, such disturbance would make the guest guilty of trespass *ab initio*.⁴

§ 103. Ejection for illness.

If the guest while in the inn contracts a contagious disease, so as to endanger the other guests, the innkeeper might send him away from the inn if it could be properly and safely done. If this can be done at all, it must be done reasonably, so as to avoid any injury to the guest. If the innkeeper cannot remove the guest safely, he must refrain from doing so.⁵

In *Levy v. Corey*⁶ the plaintiff alleged that while his wife was confined to her room in the defendant's hotel, dangerously ill with typhoid fever, the defendant at three o'clock in the morning made noisy preparations, declaring it his intention to remove her from the hotel to an outhouse where the servants slept, unless the plaintiff paid two thousand five hundred dollars. The plaintiff, having paid the money, was suing to recover it on the ground that it was paid under duress. Chief Judge McAdam thus charged the jury:

"Where a guest is taken ill at a hotel, with a contagious disease, likely to be communicated to others, the proprietor, after notifying the sick guest to leave, has the right to remove such guest in a careful and becoming manner, and at an appropriate

² *McHugh v. Schlosser*, 159 Pa. 480, 28 Atl. 291, 39 Am. St. Rep. 699, 34 Wkly. Notes Cas. 33 (1894).

³ *Parke, B.*, in *Howell v. Jackson*, 6 Car. & P. (Eng.) 723, 725 (1834).

⁴ *The Six Carpenters' Case*, 8 Coke (Eng.), 290 (1610).

⁵ *McHugh v. Schlosser*, 159 Pa. 480, 28 Atl. 291, 39 Am. St. Rep. 699, 34 Wkly. Notes Cas. 33 (1894).

⁶ 1 City Ct. Rep. Supp. 57 (1884).

hour, to some hospital or other place of safety provided the life of the guest be not imperilled thereby. This is not only a right inherent in the hotel keeper, but a duty owing to the other guests, and to the preservation of public health. If the hotel keeper exercises these rights at an improper time, or in an illegal and unbecoming manner, he is liable therefor on the ground of negligence, or for the abuse of authority.

“The hotel keeper has the right, under the circumstances before detailed, to make any reasonable arrangement for extra compensation, the amount of which is left largely to the mutual agreement of the parties in interest, and when they mutually agree in respect thereto, the law will infer that the price agreed upon is fair and just, and the burden of proving the contrary is on him who alleges imposition or undue advantage. The agreement, to be legal, however, should be voluntary, and the result of mutual assent in respect to which the minds of both parties should meet. If, however, the hotel keeper, not content to join in an agreement founded on mutual assent, determines to take advantage of the misfortune which has occurred in his house, makes threats to remove the guest when not in a condition to be removed, or threatens to remove such guest at a time or in a manner not warranted by the circumstances, and by force of such threats exacts from such guest, or her husband, a sum of money arbitrarily named by him, and not fixed by voluntary assent, nor warranted by the exigencies of the occasion, he commits a wrong which the law will not tolerate; he has exacted the money so obtained by duress, and acquires no title to it, and it can be recovered back by the person from whom it was wrongfully exacted.”

§ 104. Ejection for refusal to pay.

As the innkeeper may refuse to admit a traveller at the beginning unless he will pay in advance, so he may eject him if after admission he falls into arrears and fails on demand to pay the amount due the innkeeper.⁷

⁷ Doyle v. Walker, 26 Up. Can. Q. B. 502 (1867).

§ 105. Ejection of one who has ceased to be a traveller.

If in the lapse of time the guest has ceased to be a traveller and has become a resident, he has no longer a right to demand entertainment, and the innkeeper may exclude him. In an English case it appeared that the plaintiff went to an inn in Brighton, was given rooms, and stayed there for a period of ten months. It was then intimated to her that the manager wished her to leave, but this she refused to do. Then notice was given to her requiring her to leave, and as she still refused, advantage was taken of her being out of the hotel, and her things were brought down and put outside, and on her return she was refused admittance. She then sued the innkeeper for wrongfully excluding her from the inn. The court held that she was lawfully excluded.⁸ Lord Esher, M. R., delivering the opinion of the court, said:

“The question is whether it is the law that if a person goes to an inn in the character of a traveller that person retains the same character for any time however long. If so, the law would be contrary to the truth; and I will never submit, unless compelled by an act of Parliament, to say that a thing shall be deemed to be that which it is not. Therefore, the question whether a person has ceased to be a traveller seems to me again to be a question of fact, and mere length of residence is not decisive of the matter, because there may be circumstances which show that the length of stay does not prevent the guest being a traveller, as, for instance, where it arises from illness; but it is wrong to say that length of time is not one of the circumstances to be taken into account in determining whether the guest has retained his character of traveller.”

But though the innkeeper may lawfully exclude an inmate after he has ceased to be technically a guest, his justification for such exclusion depends upon his being able to show affirmatively that the former guest has ceased to have that character. This was the ground of decision in a Canadian case. A trav-

⁸ Lamond v. Richard [1897], 1 Q. B. 541, 66 L. J. Q. B. 315, 76 L. T. 141, 45 W. R. 289, 61 J. P. 260.

eller came to an inn, was received as a guest, and remained six weeks, paying for her board by the week; and at the end of that time she was ejected by the innkeeper. She was held to be entitled to damages.⁹ In the course of his opinion Robinson, C. J., said:

“It was proved that the plaintiff came to this inn as a traveller or guest, and was received as such. If she did pay by the week as was alleged, and if she was charged for board by that name, that would not certainly show that she was there under any special contract inconsistent with the common law relation between an innkeeper and his guest. She had been there about six weeks. If she had rented a certain apartment as tenant for any certain term, she would have been no longer a guest; but what is shown is that she came to the inn as a guest; that she was so received, staid there six weeks, and had paid for her board by the week two days in advance. Under these facts, we think the defendant, for all that appears, had his privilege of lien on the plaintiff's goods, if she had attempted to depart without paying; and that she, on the other hand, had her rights as a guest, and could not be rudely or abruptly turned out without some cause to justify it; and no such cause was shown, nor was any pleaded. If the relation of guest had, before the occasion complained of been put an end to, we can only say that it was not proved to be so upon the trial.”

⁹ Whiting v. Mills, 7 Up. Can. Q. B. 450 (1849).

TITLE III.

THE UNDERTAKING OF THE INNKEEPER WITH
HIS GUEST.

CHAPTER X.

THE NATURE OF THE INNKEEPER'S OBLIGATION.

§ 111. The obligation is imposed by law.	§ 113. Guest need not be the party bound to pay.
112. Capacity to contract not required.	114. What law governs the obligation.

§ 111. The obligation is imposed by law.

The obligation of an innkeeper to care for his guest is imposed by law, and necessarily results from the admittance of the guest to the inn. There is no need of a contract between the parties. As soon as the relation of host and guest is established, the rights and duties of both parties to the relation are at once fixed. This is to be sure a consensual obligation, in the sense that the consent of the innkeeper as well as that of the guest is needed to create it. If the innkeeper refuses to receive the guest, though his refusal is wrongful,¹ or if the guest enters the inn without the knowledge of the innkeeper, and without his consent,² the obligation does not arise. But though consent to receive the guest is required, and the obligation is a consensual one, it is not in any sense contractual; and it is unnecessary to seek the elements of a contract in the relation between the parties.

¹ *Bird v. Bird*, 1 And. 29, Benl. 60 (Eng. 1558); *Bennett v. Mellor*, 5 T. R. (Eng.) 273 (1793).

² *Gastenhofer v. Clair*, 10 Daly (N. Y.), 265 (1881).

§ 112. Capacity to contract not required.

For this reason it is not necessary to find in a guest the capacity to make a contract. The relationship may be as well established with a person under incapacity, an infant, a married woman, or an insane person, as with a person entirely *sui juris*. The innkeeper is obliged to receive and entertain the guest, and he is obviously bound by the obligations and entitled to the rights flowing from the relation. As he is compelled to receive, "it would be a legal absurdity to compel a man to make a contract, and at the same time permit the other party, who is the instrument of compulsion, to avoid such contract."³

On the other hand, when a man has become and remains an innkeeper, a supervening incapacity on his own part will not protect him from responsibility. So in an old English case where an innkeeper was sued for failure to keep safely the goods of his guest, he pleaded that at the time the guest lodged with him he was sick and of non sane memory. On demurrer, this was held not to be a good plea. "For the defendant, if he will keep an inn, ought at his peril to keep safely his guest's goods; and although he be sick, his servants then ought carefully to look to them. And to say he is of non sane memory it lieth not in him to disable himself."⁴

§ 113. Guest need not be the party bound to pay.

It is not necessary even that the guest should be personally obliged to pay. If, for instance, a man goes with his family to an inn, each member of the family is a guest, though the head of the family alone is responsible for payment of the innkeeper's charges. And in general everyone who is received and entertained as a guest at an inn is a guest, though his bill is paid by another.⁵

³ Watson v. Cross, 2 Duv. (Ky.) 147 (1865). The court is of course using the word *contract* in a broad and non-technical sense. See further on this question *post*, § 253.

⁴ Cross v. Andrews, Cro. Eliz. 622 (1598).

⁵ Kopper v. Willis, 9 Daly (N. Y.), 460 (1881); Read v. Amidon, 41 Vt. 15, 98 Am. Dec. 560 (1868).

§ 114. What law governs the obligation.

Since the obligation of the innkeeper to his guest is created by the law, and not by the will of the parties, the nature of the obligation depends upon the law that creates it; and since the law may differ in different jurisdictions, it may become important to determine what law it is that creates and governs the relation. The law of the place in which the guest is received by the innkeeper as his guest will determine the nature of the obligation created by such reception.⁶

⁶ *Holland v. Pack, Peck* (Tenn.), 151 (1823).

SUBTITLE I.

THE BEGINNING OF RESPONSIBILITY.

CHAPTER XI.

THE RECEPTION OF THE GUEST.

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| § 121. Relation of host and guest established by reception.
122. Reception requires communication of intention to the innkeeper. | § 123. Traveller entering inn without presenting himself as guest.
124. Refusal of innkeeper to accept guest.
125. Reception in another capacity than as guest. |
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§ 121. Relation of host and guest established by reception.

When a traveller comes to an inn and is received by the innkeeper for the purpose of entertaining him during his journey, the relation of host and guest is thereby established.¹ No lapse of time is required for the establishment of this relation; if the guest presents himself for entertainment and is accepted, the relation "is instantly established between them."²

§122. Reception requires communication of intention to the innkeeper.

To be received at an inn the guest must usually communicate with the innkeeper or with some servant authorized to receive guests; and though sometimes (as at a public restaurant, part of the inn) one may perhaps become a guest by merely going

¹ Pinkerton v. Woodward, 33 Cal. 557, 91 Am. Dec. 657 (1867); Norcross v. Norcross, 53 Me. 163 (1865); Healey v. Gray, 68 Me. 489, 28 Am. Rep. 80 (1878); Ross v. Mellin, 36 Minn. 421, 32 N. W. 172 (1887).

² Norcross v. Norcross, 53 Me. 163 (1865). See to the same effect Ross v. Mellin, 36 Minn. 421, 32 N. W. 172 (1887).

into a part of the inn provided for that purpose, that is not the case with the dining room of an inn of the ordinary sort. One entering the dining room and calling for food without notice to the innkeeper or his clerk does not become a guest.³ In such a case Judge Van Hoesen said: "There must be at least two parties to every contract, and when it is attempted to charge an innkeeper with liability for the loss of goods belonging to a person who asserts that he was a guest, the inquiry is, how was the relation of guest and innkeeper created? No person can make himself a guest without the innkeeper's assent. Of course, that assent may be given by an agent or a servant, entrusted with the duty of receiving and rejecting travellers. There need be no formal bargain, for the acceptance of a person as a guest will be implied where he calls for refreshment which is furnished to him by a servant who has the discretion either to give or to withhold it. But a man cannot make himself a guest by slipping into the dining room of a hotel and ordering a dinner of a waiter who has no discretion whatever, and who brings what is ordered, under the belief that the person who gives the order is in the dining room by permission of the innkeeper. Permission to enter the dining room cannot be implied. A man can no more enter the dining room without permission, than he can enter a sleeping room, and go to bed without permission. He must first give the innkeeper an opportunity to receive or to reject him. He could not become a guest without making an application to be received as such to Clair, or to some person authorized to act for him in such a matter." And Judge J. F. Daly added: "It is not the fact that a person does or does not take lodgings or partake of refreshments in the inn that makes him a guest. It is the motive with which he visits the place: whether to use it even for the briefest period or the most trifling purpose as a public house or not; and I think it will be long before the courts will be disposed to hold landlords liable for the property of persons who call to visit their guests, and incidentally enjoy the hospitality

³ *Gastenhofer v. Clair*, 10 Daly, 265 (N. Y. 1881).

of the house. The taking of the dinner without notice to the proprietor or the clerk no more constituted plaintiff a guest than his sitting in the parlor, using the reading room or writing room, etc., for any period, while waiting for his host to appear."

§ 123. Traveller entering inn without presenting himself as guest.

A traveller may, however, enter a public room at an inn without at once presenting himself as a guest; and in such case the relation of host and guest is not established between the innkeeper and himself. So a traveller who enters a public room of an inn for a temporary purpose, without intending to lodge or be otherwise entertained at the inn is not a guest.⁴

As soon as the relation is established, the guest must compensate the innkeeper for his services; and it must be clear that one who enters an inn does not by that mere fact become liable to pay the innkeeper's charges. Bearing this in mind, we can agree in the correctness of the decision in an English case where it appeared that a traveller went to an inn and gave his luggage to a porter, intending to stay at the inn, but upon being handed a telegram which had been sent there for him, he decided not to stop, but to continue his journey at once. It was held he had not become a guest.⁵

§ 124. Refusal of innkeeper to accept guest.

Not only must the guest communicate his intention to the innkeeper; the latter must consent to receive him as a guest. If the innkeeper refuses to receive a person as a guest, whether the refusal is legal or illegal, the relation is not established. Therefore when an innkeeper refuses to receive a guest (whether justifiably because his house is full, or unjustifiably), such person cannot, by placing his property in the inn, make the innkeeper liable for it.⁶

⁴ *Bernard v. Lalond*, 8 Leg. News (Can.), 215 (1885).

⁵ *Strauss v. County H. & W. Co.*, 12 Q. B. D. 27 (1883).

⁶ *Bird v. Bird*, 1 And. 29, Benl. 60 (Eng. 1558); *Bennett v. Mellor*, 5 T. R. (Eng.) 273 (1793).

If the refusal is wrongful, the remedy is by action for the refusal; if it is lawful, the applicant has no right to force the obligation on the innkeeper. Thus, where the innkeeper having said his inn was full, the applicant nevertheless placed his goods in the inn, and induced a guest to share his bed with him, without the consent of the innkeeper, it was held that the latter was not responsible for the goods as innkeeper.⁷

So where an innkeeper refused to accept a guest because he was going to serve on a jury next morning, and the traveller at his request received the keys to look out for himself, the relation of host and guest was not established.⁸

§ 125. Reception in another capacity than as guest.

A person may be received in an inn by the innkeeper, but in another capacity than as guest. He may, for instance, come to the inn on the invitation of the innkeeper as his friend, and not on the footing of a paying guest. The relation of host and guest is not established in such a case, and the responsibility of an innkeeper does not come into existence.⁹ Many cases considered in the following chapter are instances of this principle.

⁷ *Bird v. Bird*, 1 And. 29, Benl. 60 (Eng. 1558); *White's Case*, 2 Dyer, 158 b (Eng. 1558).

⁸ *Y. B. 11 Hen. 4*, 45, pl. 18 (1410).

⁹ *Anonymous*, 1 Roll. Abr. 3, pl. 4; *Taylor v. Humphreys*, 30 L. J. M. C. 242 (Eng. 1861).

CHAPTER XII.

WHO IS A GUEST.

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| <p>§ 131. A guest need not resort to an inn for both food and lodging.</p> <p>132. Whether a guest must be personally entertained.</p> <p>133. Entertainment of servant or child as making master or father a guest.</p> <p>134. Resorting to inn to attend banquet or ball.</p> <p>135. One not entitled to admittance received as guest.</p> | <p>§ 136. Guest at inn for illegal purpose.</p> <p>137. Guest at inn as result of illegal act.</p> <p>138. Difference between guest and boarder.</p> <p>139. Length of stay at inn as a test of the difference.</p> <p>140. Residence in the town as a test of the difference.</p> |
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§ 131. A guest need not resort to an inn for both food and lodging.

It is not necessary, in order that one received at an inn should become a guest there, that he should resort to the inn for both food and lodging. The inn must be prepared to supply both, at the traveller's need; but the traveller may stop on his way at an inn merely for food and drink, or for either one of them, and proceed on his journey the same day; or he may arrive at the inn late at night, needing lodging only, and leave the inn early in the morning without stopping for breakfast. In either case he is a guest.

So it has been held that a traveller resorting to an inn for food and drink only is a guest.¹ Upon this principle where a person came to an inn in the afternoon, intending to leave by a late train that night, and therefore took no room, but remained in the public room of the inn, waiting for his train, and

¹ McDonald v. Edgerton, 5 Barb. (N. Y.) 560 (1849); Kopper v. Willis, 9 Daly (N. Y.), 460 (1881); Read v. Amidon, 41 Vt. 15, 98 Am. Dec. 560 (1868).

intending to get supper there, it was held that he was a guest.² And so where one called at an inn for the purpose of dining only, and was supplied with dinner in the dining room, he was held to be a guest.³ Even if he resorts to the inn for drink only, he may thereby become a guest.⁴ "Of course, a man could not be said to be a traveller who goes to a place merely for the purpose of taking refreshment; but if he goes to an inn for refreshment in the course of a journey, whether of business or of pleasure, he is entitled to demand refreshment." ⁵ So in an English case where the servant of the plaintiff, having the plaintiff's goods, asked if he could leave the goods until next week, and upon the innkeeper's saying he could not yet tell whether he would have the room to keep them, the servant set down the goods and had some liquor, and while he was drinking the goods were stolen, it was held that the relationship of host and guest had been established, and the innkeeper had become liable for the goods.⁶

§ 132. Whether a guest must be personally entertained.

Whether, in order to be a guest, a traveller must be personally entertained at the inn is somewhat doubtful on the authorities. In several jurisdictions it has been held that a traveller who comes to town and himself lodges in a private house is not a guest, though he sends his servant or his horse to the inn. If, under such circumstances, the horse dies in the night through no negligence of the innkeeper, it is held that the latter is not liable.⁷

² *Overstreet v. Moser*, 88 Mo. App. 72 (1901).

³ *Orchard v. Bush*, [1898] 2 Q. B. 284, 67 L. J. Q. B. 650, 78 L. T. Rep. 557, 46 W. R. 527 (Eng. 1898); *Read v. Amidon*, 41 Vt. 15, 98 Am. Dec. 560 (1868).

⁴ *McDonald v. Edgerton*, 5 Barb. (N. Y.) 560 (1849).

⁵ *Cockburn, C. J.*, in *Atkinson v. Sellers*, 5 C. B. N. S. (Eng.) 442, 448 (1858).

⁶ *Bennett v. Mellor*, 5 T. R. 273 (1793).

⁷ *Healey v. Gray*, 68 Me. 489, 28 Am. Rep. 80 (1878); *Ingallsbee v. Wood*, 33 N. Y. 577, 88 Am. Dec. 409 (1865); *Neale v. Crocker*, 8 Up. Can. C. P. 224 (1858).

But by another view it is held in such a case that the innkeeper is liable as such if he receives a horse, though the owner do not lodge at the inn; for he receives the horse and is paid for it in the course of his business as innkeeper. The majority of the court of Queen's Bench so held, against the opinion of Lord Holt;⁸ and this opinion has been followed in Massachusetts⁹ and Delaware.¹⁰ In the opinion of the Delaware court Chief Justice Comegys said: "The law makes the owner a guest because of the compensation charged by the innkeeper. The liability of the traveller for that (which attaches upon the reception of the beasts) constitutes this relation of host and guest. It is his property that is nourished while upon his journey, and that in law is the same as if he had been in his own person the actual recipient of entertainment. It would be otherwise entirely of dead or inanimate things left at the inn by such traveller, as to which nothing would be paid to the innkeeper. The existence of an inn involves, in legal contemplation, a stable attached to it also, and travellers with horses and carriages are not to be presumed to put them up at the inn to be kept there otherwise than as in inn stables strictly; whereas those not travellers in the sense I have been employing, but merely putting up their teams at the inn stables as a livery (as is the case with persons residing near town who use such stables as mere conveniences), are not to be considered in the light of guests, and entitled to the same degree of protection as travellers are."

The Vermont authorities appear to take the same view, though the point is not finally determined. In the leading case of *McDaniels v. Robinson* it appeared that the plaintiff left his horse at the defendant's inn, and took a room in the inn and left goods in the room; he took only part of his meals there,

⁸ *Yorke v. Grenaugh*, 2 Ld. Ray. 866 (1703). "For the innkeeper gains by the horse, and therefore makes the owner a guest, though he was absent; *contra* of goods left there by a man, because the innkeeper has no advantage by them."

⁹ *Mason v. Thompson*, 9 Pick. (Mass.) 280, 20 Am. Dec. 471 (1830).

¹⁰ *Russell v. Fagan*, 7 Houst. 389, 8 Atl. 258 (Del. 1886).

and did not use his room every night. Some of the goods were lost. The innkeeper was held liable as such, on all the facts, and the court intimated that putting the horse up was alone enough to make the plaintiff a guest.¹¹ On a new trial, however, the plaintiff was not proved to have been a guest personally; and the leaving of the goods which were lost had nothing to do with the stabling of the horse. For this reason (without denying that the innkeeper would have been liable as such for injury to the horse) the court gave judgment for the defendant.¹²

§ 133. Entertainment of servant or child as making master or father a guest.

Where a man's servant (or minor child) with his property is received at an inn, it has been said that the master (or father) is a guest, and has the rights of such.¹³ It is clear, however, that the servant or child who is personally present at the inn is himself a guest, even if the master or father accompanies him and pays the bill,¹⁴ *a fortiori* if he is not present. It would seem that since there is but one person present, obtaining entertainment, and as but one guest is paid for, there is but one guest; and the absent master or father is therefore not properly a guest. The point actually decided in the cases is that the innkeeper is directly liable to the master or father, as owner, for a loss of the goods; and the true reason for the decision is doubtless that in the mind of the court in *Robinson v. Waller*,¹⁵ when it distinguished the case from that where the goods were taken to the inn by a bailee on the ground that in the case under discussion "the absolute property" is in the owner. In other words, the father or master being in legal possession of

¹¹ *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854).

¹² *McDaniels v. Robinson*, 28 Vt. 387 (1856).

¹³ *Robinson v. Waller*, 1 Roll. Abr. 3, pl. 7 (Eng. 1617); *Coykendall v. Eaton*, 55 Barb. 188, 37 How. Pr. 438 (N. Y. 1869); *Epps v. Hinds*, 27 Miss. 657, 61 Am. Dec. 528 (1854).

¹⁴ *Ante*, § 113.

¹⁵ *Supra*.

the goods while they are in the hands of the servant or member of his family, he may sue the innkeeper directly, as the person whose possession has been infringed.

§ 134. Resorting to inn to attend banquet or ball.

Where a banquet or a ball is held at an inn, a guest at such banquet or ball is not a guest of the innkeeper, and the latter is not liable, in the absence of negligence, for any goods lost by the guest.¹⁶ In such a case Judge Blodgett said: "As to the banquet where the loss occurred, and which they attended on the invitation and at the expense of the club, the plaintiffs are justly to be regarded as its guests, and not of the defendant, as innkeeper or otherwise, who simply provided the banquet as caterer under a contract with the club, without any lien or claim for compensation against its guests, and with no right or power to exclude anybody from participating in its festivities whom the club might properly invite. Neither by contract nor by operation of law was the defendant acting in the character of innkeeper as to the club, and still less as to its guests, who would have had no right whatever to attend except upon its invitation. Both the club and its guests came, not as ordinary travellers to an inn, but as to a banquet, for the purpose of participating in and enjoying its festivities." ¹⁷

The fact that the innkeeper himself supplies the banquet, so that the persons present are being furnished entertainment by him for hire, does not alter the case. On this point Judge Blodgett well said, in *Amey v. Winchester*,¹⁸ "the fact that the defendant chanced to be keeping an inn, and served the banquet there, makes his liability no greater than that of any other person not an innkeeper, who might have taken and executed the

¹⁶ *Carter v. Hobbs*, 12 Mich. 52, 83 Am. Dec. 762 (1863); *Amey v. Winchester*, 68 N. H. 447, 39 Atl. 487, 39 L. R. A. 760 (1896). But in *Bourgoin v. Hogan*, 15 L. Can. R. 424 (1864), the innkeeper was held liable in such a case for the loss of a coat of which he took charge, and for which he issued a check.

¹⁷ *Amy v. Winchester*, *supra*.

¹⁸ *Supra*.

contract, either at the inn or elsewhere. One may be an innkeeper without being a club caterer, or he may be a club caterer without being an innkeeper, or he may be both; but, if he is, the two employments are so far separate and distinct in respect of duties and liabilities as not to make him responsible in the one capacity for liabilities incurred in the other." The case is the same even if the guest at the ball or banquet deal in other ways directly with the innkeeper, as by buying liquor, or putting up his horse in the stable of the inn.¹⁹

Nor is the case altered even if the innkeeper is himself the person who gives the entertainment and invites the public to be present.

So, where an innkeeper gave a ball and furnished food and drink to a person attending the ball, he was held not to be an innkeeper in so doing, though one who resorted to him as an innkeeper and was provided with the same refreshment would become a guest. In this case the innkeeper, the court said, was in the position of any owner of a ballroom who should do the same. It is not the amount of refreshment but the character under which the person buys it that makes him a guest.²⁰

In the case of *Amey v. Winchester*,²¹ a person who was apparently a guest at the inn, attended such a banquet, leaving his hat at the door of the supper room, and it was lost during the banquet. The court held that the owner was not a guest at the time, and the innkeeper was not liable. It may be doubted whether in this case the court did not go too far; for it is difficult to see how the guest ceased to be such by attending the banquet at his inn.

§ 135. One not entitled to admittance received as guest.

Even a person not entitled to demand admittance, not being

¹⁹ *Carter v. Hobbs*, 12 Mich. 52, 83 Am. Dec. 762 (1863); *Fitch v. Casler*, 17 Hun (N. Y.), 126 (1879).

²⁰ *Fitch v. Casler*, 17 Hun (N. Y.), 126 (1879).

²¹ 68 N. H. 447, 39 Atl. 487, 39 L. R. A. 760 (1896).

a *bona fide* traveller, will become a guest and entitled to all the rights of a guest if he is received voluntarily in the inn upon the footing of a guest. The innkeeper has a right to refuse to receive him, but that right he may waive; and he does waive it by consenting to receive the guest. Thus it is usually stated that one who lives in the same town with the innkeeper cannot be a guest, since he is not a traveller seeking entertainment during his journey. While it is true that such a person is often received to be entertained out of friendship merely, and therefore is not a guest,²² yet if he is really received on the footing of a guest the relation of host and guest is thereby established.²³

§ 136. Guest at inn for illegal purpose.

Where a person went to an inn with a prostitute and took a room which he occupied with her, it was held that on account of his misconduct he did not become a guest, any more than a thief would who took a room to steal from the guests.²⁴ It is clear in this case, as the court says, that if the innkeeper had been aware of the party's purpose in applying for the room, he might have refused to receive him; and even after the applicant had been received, he could have been ejected upon his purpose becoming known. It does not follow, however, as the court appeared to hold, that therefore he was not a guest. The court says that if he had been a guest "he could not have been turned into the street, though his profligate conduct was outraging all decency and ruining the reputation of the hotel." This dictum can hardly be supported; for, as has been seen,²⁵ the innkeeper would certainly have a right to turn out a guest under such circumstances. And though the innkeeper would have been justified in refusing to receive the applicant as a guest, it by no means follows that if he was received the applicant did not occupy the exact position of a guest. The inn-

²² *Ante*, § 125.

²³ *Walling v. Potter*, 35 Conn. 183 (1868); *Orchard v. Bush*, [1898] 2 Q. B. 284, 67 L. J. Q. B. 650, 78 L. T. Rep. 557, 46 W. R. 527 (Eng. 1898).

²⁴ *Curtis v. Murphy*, 63 Wis. 4, 22 N. W. 825, 53 Am. Rep. 242 (1885).

²⁵ *Ante*, § 102.

keeper can doubtless waive his right to refuse admittance and accept an applicant as his guest; though it is equally clear that he may if he choose, accept him on such terms that he will not be a guest.²⁶ In this case the applicant was received as a guest. He, however, was guilty of fraud in asking for accommodation for himself and wife; and the decision may probably best be supported on the ground that the guest was precluded from recovery in the case because of his fraud.

As Mr. Justice Kennedy said in *Orchard v. Bush*:²⁷ "If a man is in an inn for the purpose of receiving such accommodation as the innkeeper can give him, he is entitled to the protection the law gives to a guest at an inn."

§ 137. Guest at inn as result of illegal act.

However it may be with the guest who is acting illegally while in the inn, it is clear that he is none the less a guest because he may have been guilty of an illegal act in coming to the inn, if his illegal conduct has ceased. Thus in a similar case to the one just discussed where the man remained after the woman had left the inn, and lost his goods, it was held that he might recover from the innkeeper. Even assuming that such misconduct would have barred him while the misconduct continued, the loss here happened after his misconduct ceased, and his previous immorality could not affect his subsequent status as a guest.²⁸

On the same principle, in a case where it appeared that the defendant was received at the inn on Sunday, and that to reach the inn on that day he had broken the statute which forbade travelling on Sunday, he was held to be a guest nevertheless,

²⁶ *Ante*, § 125, 135.

²⁷ *Supra*.

²⁸ *Lucia v. Omel*, 46 App. Div. (N. Y.) 200, 61 N. Y. S. 659 (1899), affirmed 53 App. Div. 641, 66 N. Y. S. 1136 (1900). The facts differed from the *Wisconsin* case (which was distinguished in the opinion) in two important particulars: In the *Wisconsin* case the plaintiff was a resident of the same town, which does not seem to have been true in this case; and the innkeeper had wrongfully refused to take charge of the property before its loss.

since the relationship was established by acts not necessarily connected with travelling on Sunday.²⁹

§ 138. Difference between guest and boarder.

An innkeeper may, and commonly does, entertain not merely transient guests, but other persons who stay at the inn for a considerable period, making in fact their residence there; such persons are boarders, not guests.³⁰

If a person is at an inn for entertainment, the question whether he is a guest or a boarder is a question of fact.³¹

The relation of innkeeper and guest once being established will be presumed to continue until the contrary appears, and not to be changed to the relation of host and boarder. The relation is not necessarily and conclusively changed by an agreement as to price, or any definite length of sojourn.³²

§ 139. Length of stay at inn as a test of the difference.

When one is staying at the inn under a contract by which he is to remain there a certain considerable time, and in return gets a special rate for board, he is presumably a boarder.³³

In a California case the facts were that the plaintiff went to the inn to ascertain if it was a place where the health of his wife would be benefited, with the determination to remain there indefinitely, perhaps for a very long time, if such should be the

²⁹ Cox v. Cook, 14 Allen (Mass.), 165 (1867).

³⁰ Walling v. Potter, 35 Conn. 183 (1868); Hall v. Pike, 100 Mass. 495 (1868); Horner v. Harvey, 3 N. Mex. 197, 5 Pac. 329 (1885); Jeffords v. Crump, 12 Phila. (Pa.) 500 (1878); Lawrence v. Howard, 1 Utah, 142 (1874).

³¹ Haff v. Adams (Ari. 1899), 59 Pac. 111; Magee v. Pacific Improvement Co., 98 Cal. 678, 33 Pac. 772 (1893); Pollock v. Landis, 36 Ia. 651 (1873); Hall v. Pike, 100 Mass. 495 (1868); Hancock v. Rand, 94 N. Y. 1, 46 Am. Rep. 112 (1883); Light v. Abel, 6 Allen (New Br.), 400 (1867).

³² Ross v. Mellin, 36 Minn. 421, 32 N. W. 172 (1887).

³³ Haff v. Adams, 6 Ari. 395, 59 Pac. 111 (1899); Moore v. Long Beach Development Co., 87 Cal. 483, 26 Pac. 92, 22 Am. St. Rep. 265 (1891); Shoecraft v. Bailey, 25 Ia. 553 (1868); Johnson v. Reynolds, 3 Kan. 257 (1865); Smith v. Keyes, 2 Th. & C. (N. Y.) 650 (1874); Meacham v. Galloway, 102 Tenn. 415, 52 S. W. 859 (1899); *ex parte* M'Manus, 6 Austral. L. T. (Vict.) 12 (1884).

case; but with a view, if her health did not improve, to leave at any time. Before going there with his family he had made an arrangement for terms of entertainment at a great deal less than those for a transient traveller, and by the month, and he went prepared to stay, if he desired, for a considerable time, and to enjoy all the gayeties that might take place. He had no other place of residence, and for the time being this inn was to be such. It was evidently the hope and the expectation of the plaintiff and wife that her health would be benefited at this inn, which was a pleasure resort, its principal business season being that of the summer. These facts, the court said, were "very persuasive that it was the intention of all the parties that he should be a boarder, and not a mere transient traveller or guest, and for the time being a resident in the place where he was intending to board;" and the court refused to disturb the finding of the court below, that the plaintiff was a boarder.³⁴

In the late case of *Crapo v. Rockwell*,³⁵ the plaintiff went to Albany in September, 1902, having just prior thereto married John M. Crapo, a business man of that city. With her husband she lived in various boarding houses until September, 1903, when they took rooms at the Ten Eyck Annex, the defendant's inn, where, with the exception of an absence of about five weeks at Bar Harbor, plaintiff continued to reside until February, 1905. The loss occurred in January of the latter year. Plaintiff's husband died at the Annex in November, 1904. He had resided and been in business in Albany since his marriage to plaintiff, and prior thereto. After their marriage he transferred his business to the plaintiff, and at the time of the trial she was still conducting the same in Albany. Neither she nor her husband had any other residence than the inn during the time they were there. The court held that she was a boarder, not a guest; and the controlling reasons appear to have been the length of her stay at the inn and the fact that she had no

³⁴ *Moore v. Long Beach Development Co.*, 87 Cal. 483, 26 Pac. 92, 22 Am. St. Rep. 265 (1891).

³⁵ 94 N. Y. Supp. 1122 (1905).

other residence in the town, though she unquestionably lived there. It was not possible, the court said, to regard her in the light of a transient guest.

But the mere fact that he has stayed for a week or longer, and that he is paying the weekly rather than the daily rate, does not prove that he is a boarder.³⁶

A lumberman, doing business on the river, went to a hotel, and, after remaining two or three days, informed the hotel keeper that he should be there frequently during the summer, and desired some deduction in the regular charge of the hotel; and it was agreed to keep him for one dollar per day, the regular price being two dollars. Nothing was said as to the length of time he expected to remain. He was held to be a guest.³⁷ In a case in the Supreme Court of Jamaica, one who was staying at an inn while he was in attendance at a sitting of the court was held to be a guest.³⁸

§ 140. Residence in the town as a test of the difference.

The determination of the question whether one who is staying at an inn is a guest or a boarder may depend upon whether the person is a resident of the town or a stranger. So a foreigner visiting the country and staying for a considerable time at a hotel was held a guest,³⁹ and a resident of another town, visiting the town where the inn was situated for business purposes merely, was held to be a guest.⁴⁰

³⁶ *Beale v. Posey*, 72 Ala. 323 (1882); *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 943, 16 L. R. A. 188 (1891); *Magee v. Pacific Improvement Co.*, 98 Cal. 678, 33 Pac. 772 (1893); *Shoecraft v. Bailey*, 25 Ia. 553 (1868); *Pollock v. Landis*, 36 Ia. 651 (1873); *Berkshire Woolen Co. v. Proctor*, 7 Cush. (Mass.) 417 (1851); *Hall v. Pike*, 100 Mass. 495 (1868); *R. L. Polk & Co. v. Melenbacker*, 136 Mich. 611, 99 N. W. 867 (1904); *Ross v. Mellin*, 36 Minn. 421, 32 N. W. 172 (1887); *Metzger v. Schnabel*, 23 N. Y. Misc. 698, 52 N. Y. Supp. 105 (1898); *Lima v. Dwinelle*, 7 Alb. L. J. 44 (N. Y. 1873); *Jalie v. Cardinal*, 35 Wis. 118 (1874); *Whiting v. Mills*, 7 Up. Can. Q. B. 450 (1849).

³⁷ *Shoecraft v. Bailey*, 25 Ia. 553 (1868).

³⁸ *Jaquet v. Edwards*, 1 Jamaica, 4 (1867).

³⁹ *Metzger v. Schnabel*, 23 N. Y. Misc. 698, 52 N. Y. Supp. 105 (1898).

⁴⁰ *Beale v. Posey*, 72 Ala. 323 (1882).

On the other hand, an employee of a railroad, making his regular trips, and stopping over at each end of his route at the hotel, where he rents a room by the month, is not a guest. He is, as the court said, "a citizen of the community at both ends of the route."⁴¹ So where a man breaks up his home and goes to a hotel in the same town, he is a boarder.⁴²

Where a man sent his family to an inn in a distant city and they remained there for several months, while he made them an occasional short visit, his family were boarders and he was a guest.⁴³

One of the most important cases involving the distinction between a guest and a boarder is the New York case of *Hancock v. Rand*.⁴⁴ The husband of the plaintiff, General Hancock, was an officer in the United States army, and in November, 1873, he applied for rooms and board at the defendants' hotel for himself and family. After some conversation between the innkeeper and Hancock, in regard to himself and family remaining at the hotel, in which certain rooms in a private house adjoining said hotel, which the defendants were then using in connection with the same, were mentioned, it was said by General Hancock that he expected to remain until the following summer, provided everything was satisfactory, and provided, also, he was not sooner ordered elsewhere on military duty. The defendants offered the terms which they would take for said rooms, which terms General Hancock accepted on the understanding that he should continue to occupy them until the next following spring or summer, provided everything was satisfactory, and provided, also, he was not sooner ordered away on military duty. General Hancock and family, immediately prior to their going to the hotel of the defendants, had been boarding at another hotel in New York city, and had no per-

⁴¹ *Horner v. Harvey*, 3 N. Mex. 197, 5 Pac. 329 (1885).

⁴² *Haff v. Adams*, 6 Ari. 395, 59 Pac. 111 (1899); *Meacham v. Galloway*, 102 Tenn. 415, 52 S. W. 859 (1899).

⁴³ *Lusk v. Belote*, 22 Minn. 468 (1876).

⁴⁴ 94 N. Y. 1, 46 Am. Rep. 112 (1883), affirming S. C., 17 Hun, 279.

manent home anywhere; and prior to the year 1873 and ever since that time the home of General Hancock had been wherever his military headquarters were, and such headquarters during that time had been at different places. The court held that Mrs. Hancock was a guest, not a boarder. An examination of the opinion at length will be instructive, and will show the spirit in which a court approaches the question under discussion.

“As a soldier, General Hancock was unable to acquire a permanent home, and by reason of his profession was obliged to live temporarily and for uncertain periods of time at different places and with innkeepers and others who make provision for the entertainment of guests and travellers. He was necessarily a transient person liable to respond to the call of his superiors at any moment and to change the locality of himself and family. The defendants kept a hotel or inn, taking care of transient guests, some staying for a longer, some for a shorter, period. General Hancock, for himself and family, paid for their meals the same as other transient guests, and by express agreement they were at liberty to leave at any time they saw fit. Under these circumstances no reason exists why they should not be protected as well as the other travellers or guests at the hotel. It is very evident, from the testimony, that no absolute and express contract was made for the hiring of the rooms and the board of General Hancock and his family for any stipulated period of time, and the most that can be claimed, on the part of the appellants, is that it was a question of fact for the consideration of the referee and for him to determine whether General Hancock and family were travellers and guests or boarders. On the one hand, as already stated, General Hancock was a transient person and could not depend upon remaining for any particular period of time at any place; he was without any permanent residence or home, and it positively appears that he made no arrangement for any permanent occupation of the rooms at defendants’ hotel. On the other hand, separate apartments were kept for boarders and for transient persons by the

defendants, and the general and his family were registered among the former, but it does not appear that he knew this fact, and hence it cannot well be claimed that he had grounds for supposing and understood that he and his family were boarders and not guests. The authorities hold beyond question that the fixing of the price does not make the party a boarder.

“The fair intendment from the evidence is that General Hancock did not go to defendants’ hotel under a contract hiring the rooms for a season, but that he was a transient person who had the right to leave at any moment, the same as any other guest. Regarding the evidence as it stands, and conceding the facts in reference to the question whether General Hancock and family were travellers and guests or boarders, there would seem to be but little question that the weight of the testimony is in favor of the proposition that they were travellers or wayfarers and that there was no hiring of the rooms of the defendants for a season or a specified time. Even if there might have been a doubt as to whether there was a hiring for a term, as the referee has found in favor of the plaintiff upon this question, we cannot disturb the finding and it should be upheld.

“In considering the question discussed it should not be overlooked that the St. Cloud Hotel was kept as a public inn in every sense and was clearly distinguishable from a boarding house; its proprietors did not claim that it was a boarding house, and there is no evidence to show that it was considered in that light, and neither the fixing of the price nor the conversation had in reference to the probability of General Hancock and family remaining for a period of time could alter or change its true character. Hotels in modern days are differently conducted from what they were in times gone by. Furnishing rooms at a fixed price and meals at prices depending upon the orders given at the usual hotel rates constitutes a material difference in the system of keeping hotels from that which formerly existed. The defendants conducted a restaurant in connection with their hotel, at which meals were furnished in

accordance with fixed prices. General Hancock and family, after the first month of their stay at the defendants' hotel, and at the time the property in question was stolen, took their meals at the restaurant, for which they paid prices for each meal the same as other guests or travellers. So far then as this is concerned they must be considered the same as other guests. Certainly they were not boarders in the sense in which that term is understood. As they were guests at the restaurant at the time when the loss occurred and paid as such, it is difficult to see upon what principle it can be urged that they were boarders because their lodgings were in the hotel or in rooms connected therewith. To sustain such a rule would make them boarders in part and guests in part. This would be unreasonable, the more so in this case, because the proof does not establish a contract for any fixed time."

The gist of the case was summed up in these words: "As a soldier, General Hancock was unable to acquire a permanent home, and *by reason of his profession was obliged to live temporarily and for uncertain periods of time at different places, and with innkeepers and others who make provision for the entertainment of guests and travellers. He was necessarily a transient person, liable to respond to the call of his superiors at any moment, and to change the locality of himself and family.*"

CHAPTER XIII.

UNDERTAKING OF RESPONSIBILITY FOR THE GUEST'S GOODS.

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| <p>§ 141. Ways of creating responsibility.</p> <p>Topic I. Goods within the precincts of the inn.</p> <p>Subtopic A. Goods bailed to the innkeeper.</p> <p>142. Responsibility begins at moment of bailment.</p> <p>143. Responsibility conditioned on owner becoming guest.</p> <p>144. Delivery to a servant of the innkeeper.</p> <p>145. Delivery by custom.</p> <p>146. Delivery by a third person for a guest.</p> <p>147. Delivery to the innkeeper or servant in another capacity.</p> <p>Subtopic B. Goods brought with the guest.</p> | <p>§ 148. Responsibility of innkeeper extends to goods in possession of guest.</p> <p>149. Goods must be within general control of innkeeper.</p> <p>150. Innkeeper's responsibility for merchandise.</p> <p>151. Special arrangement made by the guest.</p> <p>152. Goods brought by guest to inn after his own arrival.</p> <p>Topic II. Goods outside the inn.</p> <p>153. Innkeeper not generally responsible for goods taken by the guest outside the inn.</p> <p>154. Goods placed outside the inn by the innkeeper.</p> <p>155. Goods placed in customary place outside the inn by guest.</p> |
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§ 141. Ways of creating responsibility.

The innkeeper may or may not be an actual bailee of the goods brought to the inn by the guest; whether he is or is not a bailee, his responsibility for goods for which he is answerable at all as innkeeper is the same. When a guest comes to an inn he always keeps in his own possession and control certain goods, such, for instance, as wearing apparel; while other goods he is likely to hand to the innkeeper for safe custody. The innkeeper's responsibility extends to both classes of goods; but the creation of responsibility is due to different circumstances in the two cases. They are, therefore, to be dealt with separately.

Furthermore, while the innkeeper is usually responsible for goods of a guest within the precincts of the inn, he is not usually responsible for goods outside the precincts of the inn. It is therefore necessary to examine separately the case of goods outside the inn.

TOPIC I.

GOODS WITHIN THE PRECINCTS OF THE INN.

SUBTOPIC A.

GOODS BAILED TO THE INNKEEPER.

§ 142. Responsibility begins at moment of bailment.

Where the goods are actually given into the possession of the innkeeper, the liability as innkeeper begins at latest at the moment of delivery to the innkeeper; and therefore the innkeeper may become responsible for the goods of a guest, even before the relationship of host and guest is established. This often happens where the innkeeper sends a conveyance to a railroad station to bring guests to his inn. When, in such a case, a traveller gives his baggage to the porter or other person authorized by the innkeeper to take it, the innkeeper becomes liable for it at once, provided the traveller later becomes a guest.¹

Even if the baggage itself is not given to the servant of the innkeeper, but only the check for it, the case would seem to be the same. "If it should appear that the trunk was not delivered by the railroad company, the innkeeper would not be liable. Being bound to extraordinary diligence in the preserva-

¹ *Coskery v. Nagle*, 83 Ga. 696, 10 S. E. 491, 20 Am. St. Rep. 333, 6 L. R. A. 483 (1889); *Williams v. Moore*, 69 Ill. App. 618 (1897) (arrangement made by innkeeper with a baggage transfer company to receive and bring to the inn the guest's baggage.) *Dickinson v. Winchester*, 4 Cush. (Mass.) 114 (1849). In this case the court said the innkeeper, who provided the conveyance, was liable from the receipt of the baggage either as innkeeper or as common carrier. The latter alternative does not seem admissible, and the case is always taken as establishing innkeeper's liability.

tion of the baggage delivered him by guests, it is incumbent on the innkeeper to show that the trunk was not received by him or his servants. The guest makes out a case, *prima facie*, when he shows the delivery of the check to the servant within the scope of whose employment was the getting of baggage and delivering it to the guests, and that the innkeeper has refused to deliver to him the baggage or the check." ²

Strictly speaking, no doubt, the liability of the innkeeper is only for the check, and if the innkeeper produced the check and showed sufficient reason for not having obtained the baggage he would no doubt perform his whole duty; but responsibility for the safety of the check and for the proper use of it is placed on the innkeeper as soon as the check is handed to his servant.

A similar state of affairs exists when the goods of an intending guest are sent to the inn and delivered there before the guest arrives. The innkeeper is obviously not obliged to accept the goods under these circumstances, but if he does so and the guest afterwards arrives and remains, the responsibility of the innkeeper for the goods begins at the moment they are received.³

§ 143. Responsibility conditioned on owner becoming guest.

It must clearly be seen, however, that in all these cases the responsibility of the innkeeper is conditioned on the owner of the goods becoming a guest within a reasonable time. Although at the time the goods are given to the innkeeper the owner *bona fide* intends to become a guest, still if he changes his mind and does not do so the innkeeper will be regarded as not responsible as such for the goods. So where the traveller gave his luggage to the porter of the inn at the railroad station, and the porter carried it to the inn, but the owner never became a guest, it was held that the innkeeper never became responsible for it as innkeeper.⁴ And in a similar case where the traveller

² Carhart v. Wainman, 114 Ga. 632, 40 S. E. 781 (1902) *Acc.* Williams v. Moore, *supra*.

³ Eden v. Drey, 17 Ill. App. 102 (1898).

⁴ Tulane Hotel Co. v. Holohan, 112 Tenn. 214, 79 S. W. 113 (1904).

went to the office of the inn, but there found a telegram addressed to him, in consequence of which he did not register, but went to another place, the innkeeper did not become responsible.⁵

In both these cases it will be noticed that if the traveller had become a guest the innkeeper's responsibility for the goods would have dated from the moment when the porter took charge of them at the railroad station; but as the owner never became a guest, the innkeeper was not liable as such even during the time while the traveller was on his way to the hotel. In other words, during that period the responsibility is doubtful; and it is settled only by the event.

Where the check for the baggage is delivered to the porter of the hotel by one who does not intend to become a guest, it is obvious that the porter has no authority to accept the goods on behalf of the hotel; and the innkeeper would not be responsible for the goods even as bailee. Even if he deposited the goods in the hotel office, without calling the attention of the proper clerk to it, the innkeeper is not responsible as innkeeper or even as ordinary bailee; "it is the same as if the porter had gratuitously brought up the valise of a friend or a stranger and put it down in the hotel office without calling any attention to it or giving the hotel employees any notice of it, and no occasion existing for them to take charge of it." The porter individually is the bailee.⁶

The case would seem, however, to be different if the owner, at the time he gives the goods to the porter, *bona fide* intends to become a guest within a reasonable time. The porter's authority as distinguished from the innkeeper's responsibility, must be determined by the facts existing at the time he takes the goods; and at that time the facts are the same as in any case of the sort where the owner carries out his intention and becomes a guest. If the owner acts *bona fide* the porter has authority to receive the goods for the innkeeper and the latter is

⁵ Strauss v. County H. & W. Co., 12 Q. B. D. (Eng.) 27 (1883).

⁶ Tulane Hotel v. Holohan, 112 Tenn. 214, 79 S. W. 113 (1904).

a gratuitous bailee. In the case just cited, however, the owner intended, at the time he gave his valise to the porter, to become a guest; but the distinction indicated was not made by the court, and the innkeeper was held not to be even a bailee.

§ 144. Delivery to a servant of the innkeeper.

Where goods are placed directly in the custody of the innkeeper they are usually given, not to the innkeeper himself, but to a servant. If it is desired to hold the innkeeper liable for a receipt of the goods by his servant, it is, of course, essential to prove the service. But it is, clearly, enough to prove apparent authority on the part of the servant, as for instance, when he is in the inn and clothed with the appearance of service there.⁷ Thus, ordinarily, a proper person with whom to deposit valuables is the person who stands in the office and assigns rooms to guests.⁸

§ 145. Delivery by custom.

Delivery may be made to the innkeeper by custom without an actual manual transfer. This is usually accomplished by putting the goods in a certain place in an open manner. Thus, where such is the custom the innkeeper may be held as bailee without showing actual knowledge on his part of the delivery where a baggage transfer company put the guest's baggage on the platform of the hotel and shouted "baggage,"⁹ or on the sidewalk in front of the hotel and rang the porter's bell.¹⁰

§ 146. Delivery by a third person for a guest.

In order to be responsible for a guest's goods as innkeeper, it is not necessary that the innkeeper receive the goods from the guest himself. The goods may be delivered to the inn-

⁷ *Rockwell v. Proctor*, 39 Ga. 105 (1869); *Labold v. Southern Hotel Co.*, 54 Mo. App. 567 (1893); *Buckle v. Probasco*, 58 Mo. App. 49 (1894); *Houser v. Tully*, 62 Pa. 92, 1 Am. Rep. 390 (1869); *Curtis v. Murphy*, 63 Wis. 4, 22 N. W. 825, 53 Am. Rep. 242 (1885).

⁸ *Buckle v. Probasco*, *supra*; *Curtis v. Murphy*, *supra*.

⁹ *Maloney v. Bacon*, 33 Mo. App. 501 (1888).

¹⁰ *Becker v. Haynes*, 29 Fed. 441 (1887).

keeper by a third person to hold for the guest; and in that case the responsibility for the goods is that of an innkeeper.¹¹

And accordingly where an innkeeper was accustomed to receive and take charge of packages brought to the inn by tradesmen for guests, he was held to be responsible as innkeeper for such packages as soon as he received them; although he might perhaps not have been bound to receive the packages. He had made it part of his business to receive the packages.¹²

§ 147. Delivery to the innkeeper or servant in another capacity.

If goods are delivered to the innkeeper it may be shown that he had them, not as innkeeper but in some other capacity.¹³ And if goods are handed to a servant of the innkeeper, it is open to the innkeeper to show that they were given to such servant not as acting for the innkeeper, but merely to hold as a friend of the owner.¹⁴ Whether they are given to the innkeeper, or the servant, in respect of the innkeeper's public calling, or as a private matter, is a question of fact in each case.¹⁵

SUBTOPIC B.

GOODS BROUGHT WITH THE GUEST.

§ 148. Responsibility of innkeeper extends to goods in possession of the guest.

In order for the innkeeper to become responsible for the goods of his guest it is not necessary that the possession of them should be given up to the innkeeper; so where the innkeeper gives the guest a key to his room and the guest takes the goods to his room and keeps them there, the innkeeper is liable for the safety of the goods.¹⁶

¹¹ *Western U. T. Co. v. Trissal*, 98 Ind. 566 (1884).

¹² *Needles v. Howard*, 1 E. D. Smith (N. Y.), 54 (1850).

¹³ *Bemon v. Watson*, 1 Roll. Abr. 3, pl. 1.

¹⁴ *Sneider v. Geiss*, 1 Yeates (Pa.), 34 (1791).

¹⁵ *Houser v. Tully*, 62 Pa. 92, 1 Am. Rep. 390 (1869).

¹⁶ *Y. B.* 42 Ed. 3, 11, pl. 13 (1367); 11 H. 4, 45, pl. 18 (1410); *Fay v. Pacific Imp. Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198,

So where a guest places his overcoat or gloves in the place provided for them in the inn, although the innkeeper is not notified of the fact, the liability of the innkeeper attaches.¹⁷

And so where the guest's personal baggage is placed in a public room in the inn, without the knowledge of the innkeeper, or even by the special request of the guest, the innkeeper is liable.¹⁸

§ 149. Goods must be within general control of innkeeper.

But while it is not necessary, in order to make the innkeeper responsible for the goods, that they should be delivered into his possession, still they must be within his general care and control. If the guest himself undertakes the care of them, or if he makes a special arrangement by which the control of them is removed from the innkeeper, the latter is not liable.¹⁹ Thus in an old case the innkeeper gave notice to a guest that he could not receive him, because he was obliged to leave at once to serve on a jury. The guest then requested that he might himself take the keys and take care of the goods. The innkeeper gave him the keys, and went away; and the goods were lost. It was held that the innkeeper was not liable.²⁰

§ 150. Innkeeper's responsibility for merchandise.

The question often arises where a guest brings merchandise to an inn and there takes a room for the purpose of exhibition and sale of the merchandise. Where the goods are placed, under these circumstances, in a separate, private room, to which

16 L. R. A. 188 (1891); *Weisenger v. Taylor*, 1 Bush (Ky.), 275, 89 Am. Dec. 626 (1866); *Epps v. Hinds*, 27 Miss. 657, 61 Am. Dec. 528 (1854); *Jalie v. Cardinal*, 35 Wis. 118 (1874); *Shaw v. Ray*, 1 Cr. & Dix C. C. (Ire.) 84 (1839).

¹⁷ *Norcross v. Norcross*, 53 Me. 163 (1865); *McDonald v. Edgerton*, 5 Barb. (N. Y.) 560 (1849); *Bradner v. Mullen*, 27 N. Y. Misc. 479, 59 N. Y. Supp. 178 (1899); *Read v. Amidon*, 41 Vt. 15, 98 Am. Dec. 560 (1868); *Shaw v. Ray*, 1 Cr. & Dix C. C. (Ire.) 84 (1839).

¹⁸ *Packard v. Northcraft*, 2 Met. (Ky.) 439 (1859); *Burrows v. Trieber*, 21 Md. 320, 83 Am. Dec. 590 (1864); *Candy v. Spencer*, 3 F. & F. (Eng.) 306 (1862); *Richmond v. Smith*, 8 B. & C. 9, 2 M. & Ry. (Eng.) 235 (1828).

¹⁹ *Vance v. Throckmorton*, 5 Bush (Ky.), 41, 96 Am. Dec. 327 (1869).

²⁰ Year Book, 11 Hen. 4, 45, pl. 18 (1410).

the guest is authorized to invite the customers, and in which he is to show his goods, the landlord is not liable for the merchandise so contained in the room.²¹

§ 151. Special arrangement made by the guest.

One element of these decisions is the fact that a special contract was made between the innkeeper and the plaintiff, who was therefore not received on the terms created by the common law. This was the significant fact in an important New York case. The plaintiff, by a special arrangement with an innkeeper and at special rates, brought his stallion to the inn on certain days in each week. The plaintiff cared for the horse, the innkeeper furnishing the feed. The horse was burned in the barn without negligence of the innkeeper, who was held not to be liable.²²

§ 152. Goods brought by guest to inn after his own arrival.

The fact that property is brought to the inn by the guest, after he becomes such, should, it would seem, have no bearing on the question whether the innkeeper has become respon-

²¹ Fisher v. Kelsey, 121 U. S. 383, 30 L. ed. 930 (1887, *semble*); Myers v. Cottrill, 5 Biss. 465, Fed. Cas. No. 9985 (1873); Burgess v. Clements, 4 M. & S. (Eng.) 306 (1815); Farnworth v. Packwood, 1 Holt N. P. 209, 1 Stark. 249 (Eng. 1816). Where personal goods of the guest were placed in the same room (which was used as his private bedroom, the innkeeper was held liable as such for them. Myers v. Cottrill, *supra*.

²² Mowers v. Fethers, 61 N. Y. 34, 19 Am. Rep. 244 (1874). Reynolds, C., said: "He is doubtless bound to receive and entertain a strolling pedler, and securely guard his pack of trinkets if brought *infra hospitium*, so long as he remains a mere guest. So, also, would he be bound to receive and entertain a wayfarer, incumbered with a stallion, but under no obligation as an innkeeper to allow his curtilage to be turned into an asylum for the breeding of horses. It is very manifest in this case that the sojourn of the plaintiff Eggnor, with the horse, at the defendant's inn, was not that of an ordinary traveller. The purpose and object was entirely different, and the defendant, as an innkeeper, was under no common-law obligation to receive and entertain the plaintiff Eggnor and his horse for such a purpose. . . . Under this condition of facts it appears to me obvious that Eggnor did not come for entertainment at the defendant's inn as an ordinary wayfarer, but under a special arrangement previously made."

sible for it; whether the property was brought by the guest when he came to the inn or later is immaterial.²³

TOPIC II.

GOODS OUTSIDE THE INN.

§ 153. Innkeeper not generally responsible for goods taken by the guest outside the inn.

Where the guest's goods are placed outside the inn by the guest or in accordance with his directions, the innkeeper is not responsible for the goods. So in an old case where a horse was brought to an inn, and the owner requested that it be put out to pasture, and this was done, it was held that the horse was not brought within the inn, and the innkeeper was not liable.²⁴ So an innkeeper is not liable in his character as such if sheep be put to pasture under the direction of the guest and they are injured by eating poisonous plants.²⁵ In a modern case an innkeeper provided, on the seashore, bath houses for the use of his guests, and goods of a guest were lost from a bath house. It was held that whatever might be the liability of the innkeeper, he was at any rate not liable for the goods so stolen on a declaration charging him as innkeeper.²⁶ And so where a guest put his horse in the pasture belonging to the innkeeper, and himself fed and took care of the horse, it was clear that the innkeeper was not liable for the horse.²⁷

The case is still clearer, where the guest leaves his goods outside the inn, against the direction of the innkeeper. Thus, where a clothier brought a cart of wool to the inn, and the innkeeper said if the clothier wished him to take charge of his cart he must put it into the yard near the inn, and the clothier did

²³ *Mateer v. Brown*, 1 Cal. 221, 52 Am. Dec. 303 (1850).

²⁴ *Windham v. Mead*, 4 Leon. 96 (abt. 1600); *Dale v. Gibson*, 1 Roll. Abr. 3, pl. 3 (but see *Mosley v. Fosset*, *ib.*).

²⁵ *Hawley v. Smith*, 25 Wend. (N. Y.) 642 (1841).

²⁶ *Minor v. Staples*, 71 Me. 316, 36 Am. Rep. 318 (1880).

²⁷ *Neal v. Wilcox*, 4 Jones (N. C.), Law 146, 67 Am. Dec. 266 (1856).

not do so, the innkeeper was held not liable.²⁸ So where the innkeeper expressly declined to be responsible for certain goods, not being needed by the guest for his own use, unless the goods were given to the innkeeper himself, the court held that if he chose to keep them, the innkeeper was not responsible.²⁹ But the important fact in these cases is that the goods were left outside the inn or outside the innkeeper's control. This is shown by a rather common case where it appears that the innkeeper offers to take goods to the guest's room, but the guest requests that they may remain in a common hallway, saying that they will be safer there. In these cases the innkeeper has been held responsible, if he allowed the goods to remain. It must be clear, therefore, that if the goods are actually within the inn the innkeeper must give explicit directions where they are to be placed, if he is to escape responsibility when the goods are not disposed of according to his wish.³⁰

§ 154. Goods placed outside the inn by the innkeeper.

If the innkeeper himself, without the direction of the guest, puts property of the guest which has been given to him, in a place outside the inn, or even entirely separate from it, the innkeeper is liable for it. So in the old case cited, the court held that if the innkeeper, without direction from the guest, had put the horse to pasture, the innkeeper would be liable.³¹ And the same thing is true where the goods of the guest are placed by the innkeeper or under his direction in any place not directly connected with the inn. So where the plaintiff, on a fair-day, coming to the defendant's inn with a horse and gig ordered the horse to be put into the stable, but gave no special direction as to the gig, and the horse was put into the stable, and the gig placed with other carriages in the public highway, near the house, where it was the practice of the defendant to

²⁸ Anon., cited in *Brand v. Glasse*, F. Moore, 158 (1563).

²⁹ *Brand v. Glasse*, F. Moore, 158 (1584).

³⁰ *Richmond v. Smith*, 8 B. & C. 9, 2 M. & Ry. 235 (Eng. 1828).

³¹ *Windham v. Mead*, 4 Leon. 96 (abt. 1600); *Dale v. Gihson*, 1 Roll. Abr. 3 F. pl. 3; *Calye's Case*, 8 Co. 63 (1584).

put carriages on fair-days, it was held that the innkeeper was responsible for the gig, and was liable for its loss.³² Lord Denman said that the gig was taken while under the protection of the innkeeper; while Littledale, J., said that since the place was commonly used for the purpose on fair-days it must be taken, as against the defendant, to be part of the inn, or, as Taunton, J., put it, it was part of the inn since the defendant by his conduct treated it as such.

So where a sleigh loaded with wheat, belonging to a guest, was put into an outhouse appurtenant to an inn, where loads of that description were usually received, and the grain was stolen during the night, the innkeeper was held liable for the loss.³³ And so where the guest's carriage is deposited in an open space near the highway which is the place designated by the innkeeper, the latter is responsible for goods contained in the carriage.³⁴

The same principle was involved in the case of *Cohen v. Manuel*.³⁵ An innkeeper directed his guest to take his horse and cart to a livery stable which belonged to the innkeeper, but was not connected with the inn. The guest did so, and put the horse and cart into the care of the innkeeper's hostler. This was held to constitute a delivery to the innkeeper, and the property was *infra hospitium*. The stable, as Savage, J., said, was his own stable, and the place he selected in which to keep the goods safely. Putting up at the inn and delivering the goods to the innkeeper was a single transaction, and he undoubtedly received the goods as innkeeper.

§ 155. Goods placed in customary place outside inn by guest.

Where, however, the guest himself places his horse or carriage in a shed outside the inn, without notice to the innkeeper, even though it was the customary place where the innkeeper

³² *Jones v. Tyler*, 1 A. & E. 522, 3 N. & M. 576, 3 L. J. K. B. 166 (Eng. 1834).

³³ *Clute v. Wiggins*, 14 Johns. (N. Y.) 175, 7 Am. Dec. 448 (1817).

³⁴ *Piper v. Manny*, 21 Wend. (N. Y.) 282 (1839).

³⁵ 91 Me. 274, 39 Atl. 1030, 40 L. R. A. 491 (1898).

placed horses and carriages of his guests, it was held that the innkeeper did not thereby become liable.³⁶ The real reason for the distinction would seem to be that in this case the innkeeper never consented to assume any liability (not knowing that the carriage had been placed in the shed), nor had he dispensed with the requirement of notice by any custom to become responsible without notice. A custom of the innkeeper to place goods in such a place is not a custom to accept goods placed there by others without notice to himself. "Such a shed is obviously not a place of safety, and a person leaving his horses therein, without request of any kind of the innkeeper or his hostler for their care, cannot hold the innkeeper for loss of the property, on an implied contract of bailment, arising out of such a state of facts. The law raises no such implication."³⁷ The reason given in *Albin v. Presby*³⁸ is different; it appears to be, that the owner, knowing the custom to place teams in an open yard or shed, assumes the risk of loss arising out of so placing them. This reasoning seems opposed to the Maine and New York cases cited, and is not to be commended. On the facts, however, the case seems to have been rightly decided.

³⁶ *Albin v. Presby*, 8 N. H. 408, 29 Am. Dec. 679 (1836); *Bradley Livery Co. v. Snook*, 66 N. J. L. 654, 50 Atl. 358, 55 L. R. A. 208 (1901).

³⁷ Fort, J., in *Bradley Livery Co. v. Snook*, *supra*.

³⁸ 8 N. H. 408, 29 Am. Dec. 679 (1836).

SUBTITLE II.

EXTENT OF RESPONSIBILITY.

CHAPTER XIV.

PROTECTION AND CARE OF THE GUEST'S PERSON.

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| <p>§ 161. Classification of duties of innkeeper to guest.</p> <p>162. Duty to furnish safe premises.</p> <p>163. Defective premises.</p> <p>164. Open elevator well.</p> <p>165. Contributory negligence of guest falling down elevator well.</p> <p>166. Duty to furnish accommodations to the guest.</p> <p>167. Right to assign room.</p> <p>168. Right to control use of room.</p> | <p>§ 169. Duty to supply food.</p> <p>170. Duty to protect guest.</p> <p>171. Protection against injury by third parties.</p> <p>172. Protection against injury by servants.</p> <p>173. Cases limiting the duty.</p> <p>174. The true extent of the duty.</p> <p>175. Protection against one who has a right to remain in the inn.</p> <p>176. Duty to protect against fire.</p> |
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§ 161. Classification of duties of innkeeper to guest.

The duties of the innkeeper to his guests personally may be divided into three classes: he must furnish shelter, protection and food. He is therefore called upon to provide safe premises, to protect the guests against personal harm, and to furnish a sufficient quantity of wholesome food.

§ 162. Duty to furnish safe premises.

The innkeeper is bound to provide reasonably safe premises.¹ This duty the innkeeper cannot escape by delegating it to another, even though the latter is a proper and generally careful person. The innkeeper is responsible if his delegate is negli-

¹ Woodward v. Birch, 4 Bush (Ky.), 510 (1869); Hilton v. Adams, 71 Me. 19 (1879); Washburn v. Jones, 14 Barb. (N. Y.) 193 (1851); Dickerson v. Rogers, 4 Humph. (Tenn.) 179, 40 Am. Dec. 642 (1843).

gent. Thus, where an innkeeper had his elevator inspected in the usual way by a proper inspector and the latter negligently failed to find a defect, the innkeeper was held liable to a guest who was injured by reason of the defect.²

§ 163. Defective premises.

Both in original safety of construction and in maintenance the premises must be such as reasonably to secure the safety of the guest. So the innkeeper has been held liable for injury to the guest by the ceiling falling upon him, owing to its defective condition;³ by the elevator falling with him, after having been negligently inspected, although the innkeeper himself had employed a proper inspector and was not personally negligent;⁴ by the breaking of a defective railing, by reason of which the guest fell into an area;⁵ and by the guest falling off an unguarded stairway.⁶

If, however, the defect is an obvious one, the guest must use reasonable care on his own part; and if he is himself negligent he cannot recover compensation for an injury from the innkeeper. So where a guest fell from an unrailed gallery he was not allowed to recover compensation where it appeared that he was aware of the defect.⁷

Of course, before a guest can recover compensation from the innkeeper in such a case it must be shown that the defect complained of was the cause of the injury. So where a guest was burned to death in an inn, and it was shown that there were no proper fire escapes on the inn, his representative could not recover damages for the death where the death was not shown to be in any way due to the lack of fire escapes.⁸

² *Stott v. Churchill*, 15 N. Y. Misc. 80, 36 N. Y. Supp. 476 (1895), affirmed without opinion, 157 N. Y. 692, 51 N. E. 1094 (1898).

³ *Sandys v. Florence*, 47 L. J. C. P. (Eng.) 598 (1878).

⁴ *Stott v. Churchill*, 157 N. Y. 692, 51 N. E. 1094 (1898), affirming 15 N. Y. Misc. 80, 36 N. Y. Supp. 476 (1895).

⁵ *Hotel Assoc. v. Walters*, 23 Neb. 280, 36 N. W. 561 (1888).

⁶ *West v. Thomas*, 97 Ala. 622, 11 So. 768 (1892).

⁷ *Ten Broeck v. Wells, Fargo & Co.*, 47 Fed. 690 (1891); *Sneed v. Morehead*, 70 Miss. 690, 13 So. 235 (1893).

⁸ *Weeks v. McNulty*, 101 Tenn. 495, 48 S. W. 809 (1898).

§ 164. Open elevator well.

Where an innkeeper leaves the door to an elevator open or unlocked so that a guest falls into the well and is injured, the innkeeper is in the ordinary case held liable.⁹

This duty of the innkeeper does not arise out of his control of the elevator, but merely out of his duty to guard the guest against harm arising from the construction or operation of the premises. The duty would be the same, though the innkeeper has no control over the elevator and no right to close the door of the elevator well. "Granting that defendant had no control of the elevator shaft, or the small hall leading to it, it was his duty to have maintained a door or barrier at the entrance from the main hall to the small hall which led to the dangerous aperture. To leave the approach from his hall to another which conducted his guest to a pitfall, open and unguarded, was such negligence as would make him liable, in our opinion, and that he had no control of the small hall, and the shaft itself, would not relieve him. When the conditions are permitted to be such, in a hotel, that from slight want of attention, or from the confusion or misapprehension that naturally attends a stranger in feeling his way through a dark hall, one may be led up, without meeting door or barrier, to a well-hole into which a plunge is taken, it may be to death, the hotel keeper cannot escape the charge of negligence on the plea that he had no right to close up the well-hole itself. He might bar or close up the entrance to a small hall, and thus prevent guests of his house, who were unacquainted with the location and the limits of his possession and control in the halls, from entering the passage to tread which in darkness was dangerous." ¹⁰

§ 165. Contributory negligence of guest falling down elevator well.

But, as in the ordinary case, the guest cannot recover, in spite of the innkeeper's neglect of duty, if he was himself negligent. Thus, where the guest was familiar with the elevator,

⁹ *Hayward v. Merrill*, 94 Ill. 349, 34 Am. Rep. 229 (1880); *Bremer v. Pleiss*, 121 Wis. 61, 98 N. W. 945 (1904).

¹⁰ *Moran, J., in Mauzy v. Kinzel*, 19 Ill. App. 571 (1886).

found the door partly open, pushed it further open, and fell in, his recovery was barred by contributory negligence.¹¹

“Where the door is fully open and the shaft is dark, the question whether a passenger is guilty of contributory negligence in stepping in without examination is one for the jury. We have found no case, however, holding that where the door to the shaft is only halfway open, so that the passenger entering is obliged to, and does, open it the rest of the way in order to enter, the question of contributory negligence is a matter of doubt; nor do we see how it could be so held. It seems to us entirely clear that the fact that the door is only part way open is a definite and unequivocal advertisement that something is wrong—certainly not an assurance that the car is there. The use of passenger elevators is now so universal that all know that when an elevator car is brought to a standstill, ready for passengers to enter or leave, the door is always thrown wide open. A door only halfway open is a plain suggestion of some unusual condition—a hint to investigate, not an invitation to enter, or an assurance of safety.”¹²

The question not infrequently arises whether the guest is negligent when he goes at night into a part of the inn which is not open to guests and there falls into an open elevator well. This was decided in the affirmative by a majority of the English House of Lords in the case of *Walker v. Midland Railway*.¹³ The plaintiff's husband, a guest in a hotel, started at night to go to the water-closet; went by mistake into a service room which was not open to guests, and there fell down an open elevator shaft and was killed. There was no light in the service room. It was held that the innkeeper was not liable, and a verdict in favor of the plaintiff was set aside. The opinion of Lord Selborne is worth quoting at length, as it illustrates the way in which such a question may be dealt with by a good judge.

¹¹ *Bremer v. Pleiss*, 121 Wis. 61, 98 N. W. 945 (1904).

¹² Winslow, J., in *Bremer v. Pleiss*, *supra*.

¹³ 55 L. T. 489, 51 J. P. 116 (1886).

“Unless there was evidence fit for the consideration of a jury that any guest in the position of the deceased would, in the darkness of night, have reasonable ground for believing this service room to be a water-closet, and for acting as he did, there is nothing else in the case which (as it seems to me) could make the respondents’ omission to provide against dangers within that service room wrongful towards the plaintiff’s husband or generally towards the guests; for there was no other ground on which the presence of any guest there could reasonably be explained or excused. Were, then, those circumstances connected with this room, which alone can be supposed to have suggested to the mind of the deceased that it might be a water-closet, enough to furnish reasonable ground for a belief, on which a guest in the situation of the deceased might reasonably act in the way he did, that this service room was a water-closet? This seems to me to be the question, putting it most favorably for the appellant. Those circumstances were the glass in the door and the audible drip of water within. I do not add the absence of light; for to me it would not seem reasonable to expect that water-closets intended for use at night in such an hotel would be left unlighted. But the glass in the door no more denoted a water-closet (there being no light within) than it did any other kind of room, passage, or place, which might receive borrowed light from the corridor, such, for instance, as a service room, a housemaid’s closet, or the entrance to a passage or back staircase. And the drip of water would be left behind by anyone advancing, as the plaintiff’s husband did, into the room, and could not be supposed by any such person to denote the situation of the object of his search. At the most, these circumstances might explain his first act, in opening the door to see what (if anything) might be discernible within; but when he had done this, and found the room quite dark, I cannot regard either of them alone, or both together, as furnishing reasonable ground for his going forward in the dark to the place where he fell, instead of proceeding a little further along the corridor, where proper water-closets, with

proper lights, might have been found. Would the respondents have been wrongdoers towards him (all other circumstances being the same) if he had come to a steep staircase instead of the unguarded well of a lift, and had fallen down it? I think not; and, if not, I do not think they can be liable because it was the well of a lift with iron doors, which had been, purposely or inadvertently, left unclosed. The magnitude of a particular danger, to anyone who may happen to come in the way of it unawares, may doubtless enhance the responsibility of the person to whom it is imputable, for the neglect of any duty which he owes to persons whom he leaves exposed to it; but I do not see how it can create such a duty, when the person who suffers would not, in the proper and ordinary course of things, or without his own unauthorized and unreasonable act, have been within the reach of the danger at all. . . . In considering whether there was any evidence of neglect of duty by the respondents, it would not, in my opinion, be right to leave out of sight the fact that they did not so conduct their hotel as to drive their guests to grope about in dark places, or to explore unknown rooms in order to find water-closets. These conveniences were provided on that corridor, in positions easily accessible, and easily discoverable by any guests in the circumstances of the appellant's husband, who might endeavor, with reasonable care and patience, to observe or to find them; and they were kept properly lighted at night."

It may well be doubted whether the court were not usurping the function of a jury in determining on the evidence that the plaintiff was negligent. There were circumstances in the case which, according to the doctrine of the American courts, would surely have justified a submission of the issue to the jury; and in a similar case in Illinois a guest who wandered into a hallway apparently not open to guests while searching for a water-closet in the night, and was injured by falling down an elevator shaft was allowed to recover.¹⁴

¹⁴ *Mauzy v. Kinzel*, 19 Ill. App. 571 (1886).

§ 166. Duty to furnish accommodations to the guest.

The duty of the innkeeper to furnish accommodation to the guest is simply to supply him with such entertainment as he needs. The inn, though a public house, does not become in any sense the house of the guests; the innkeeper continues to be the housekeeper, and the management of the premises remains absolutely and at all times in his hands, subject only to the right of the guests to receive reasonable entertainment.

§ 167. Right to assign room.

It follows that the innkeeper, in the course of his management, has the absolute right to assign the guest to any proper chamber;¹⁵ and having assigned a guest to one room, he may at will change the room, putting him into a different room, provided the latter furnishes reasonable accommodation.¹⁶ The assignment of a guest to a room is no sense a lease; it is a mere revocable license.¹⁷

The innkeeper must, of course, provide a reasonable number of common rooms; but he may refuse to furnish light and heat for the guest to occupy his chamber as a reading or writing room, or a common room as a sleeping apartment. So where a guest refused to sleep in the chamber assigned to him, and requested that candles should be furnished him that he might sit up all night in a chamber, the innkeeper was justified in refusing, at least where he offered to allow the guest to sit up and have light in the regular reading room. Lord Abinger, C. B., said: "A landlord is not bound to provide a traveller with a particular room, nor to permit him to occupy a bedchamber as a sitting room if he offers him another room fit and proper for the purpose. He is to provide him with a room affording rea-

¹⁵ *Fell v. Knight*, 8 M. & W. 269, 10 L. J. Ex. 277, 5 Jur. 554 (Eng. 1841); *Scrivenor v. Reed*, 6 W. R. (Eng.) 603 (1857); *Doyle v. Walker*, 26 Up. Can. Q. B. 502 (1867).

¹⁶ *Doyle v. Walker*, 26 Up. Can. Q. B. 502 (1867).

¹⁷ *Rodgers v. People*, 86 N. Y. 360 (1881); *Lane v. Dixon*, 3 C. B. 776, 784 (Eng. 1847). "We think the contention on the plaintiff's part involves a confusion between the character and position of an innkeeper and a lodging-house keeper." *Draper, C. J., in Doyle v. Walker, supra.*

sonable accommodation, but not any room which the caprice of his guest may lead him to select, for with that he is not bound to comply." ¹⁸

As the innkeeper may assign the guest to any chamber he pleases, so he may serve him with food in any room he pleases, provided it is a decent and proper room; and the guest cannot complain if the innkeeper refuses to serve him in the common dining room. This question was involved in the interesting case of *Regina v. Sprague*.¹⁹ The suit was an indictment for refusing to supply Lady Harberton with food. Lady Harberton was cycling, clad in the "rational costume," so called, and she stopped for luncheon at the defendant's inn. The defendant refused to serve her in the coffee room unless she put a skirt over the rational costume, but offered to serve her in a private room behind the bar. On looking into the room Lady Harberton found it was occupied by men, some of whom were smoking, and refused to enter; and thereupon the prosecution was instituted, at the Surrey Quarter Sessions. The defendant urged that no person had a right to choose a particular room; to which Mr. Cave, the Chairman, replied, "Suppose a landlord said he would only supply victuals in the coal cellar?" The defendant said that was an extreme case; but would an indictment lie against a landlord because a fastidious lady disliked the smell of smoke? The case ought not to be left to the jury.

The Chairman, however, left the question to the jury. The question was, he said, "whether there was a refusal to supply food in a decent and proper place. The innkeeper could select the room provided it was a decent and proper place. Nor, in his opinion, was a guest entitled to have a room exactly to his or her taste. The jury must judge by the requirement of ordinary and reasonable persons." The Chairman then asked the jury to consider whether the bar parlor was a decent and proper room for a guest to have lunch in. The jury

¹⁸ *Fell v. Knight*, 8 M. & W. 269, 10 L. J. Ex. 277, 5 Jur. 554 (Eng. 1841).

¹⁹ *Regina v. Sprague*, 63 J. P. 233 (Eng. 1899).

brought in a verdict of not guilty. It may be doubted whether an American jury would have been so ungallant; but the action of the Chairman was unquestionably correct.

§ 168. Right to control use of room.

At the same time the innkeeper cannot go further than determine the kind of accommodation to be furnished to the guest; he cannot demand that the guest make any particular use of the accommodation. He may place such reasonable food as he chooses before the guest, but he cannot complain if the guest refuses to eat it; nor can he object if the guest refuses to occupy his bed, but chooses to sit up all night. So in the course of the argument in *Fell v. Knight*,²⁰ Alderson, B., said: "A traveller is not bound to go to bed. He may have business to attend to which would render it necessary for him to sit up all night. An innkeeper cannot be justified in turning his guest out because he refuses to sleep."

§ 169. Duty to supply food.

The innkeeper must provide as much food as he can reasonably foresee to be necessary. He must provide and keep on hand food enough for such guests as may be reasonably expected.²¹ He is not an insurer of the quality of his food, but he would be liable for knowingly or negligently furnishing bad and deleterious food.²²

As an innkeeper does not lease his rooms, so he does not sell the food he supplies to the guest. It is his duty to supply such food as the guest needs, and the corresponding right of the guest is to consume the food he needs and to take no more. Having finished his meal, he has no right to take food from the table, even the uneaten portion of the food supplied to him; nor can

²⁰ 8 M. & W. 269, 10 L. J. Ex. 277, 5 Jur. 554 (Eng. 1841).

²¹ *Atwater v. Sawyer*, 76 Me. 539, 49 Am. Rep. 634 (1884), in which case it appeared that this common-law obligation had been enacted in statutes.

²² *Sheffer v. Willoughby*, 163 Ill. 518, 45 N. E. 253 (1896) (the case of a restaurant). In *Stringfellow v. Grunewald*, 109 La. 187, 33 So. 190 (1902), where this was the complaint, the charge was not made out on the facts.

he claim a certain portion of food as his own, to be handed over to another in case he chooses not to consume it himself. The title to food never passes as a result of an ordinary transaction of supplying food to a guest; or, as it was quaintly put in an old case, "he does not sell but utters his provision."²³ For this reason an innkeeper is not a trader, and cannot become a bankrupt or insolvent under an act which applies to traders only.²⁴

§ 170. Duty to protect guest.

It is the duty of an innkeeper to take reasonable care of the persons of his guests, so that they may not be injured while in the inn by want of such care on his part. So in the case of *Sandys v. Florence*, just cited, where a part of the ceiling fell on a guest in an inn and injured him, the innkeeper was held liable only if he was negligent.²⁵ He is not, however, an insurer of the guest's safety; his responsibility is limited to exercising reasonable care.²⁶

§ 171. Protection against injury by third parties.

The innkeeper, while not an insurer of a guest against personal injury, must protect him against injury from third persons so far as it is within his power to do so. Thus, where, in the presence of the innkeeper, and without being prevented by him, one guest pinned a piece of paper on the coat of another guest and set it on fire, the innkeeper was held responsible to the injured guest for the injury thus caused.²⁷ And so an innkeeper who, without warning, allows a guest to come to an inn

²³ *Wright, Serg.*, in *Parker v. Flint*, 12 Mod. 254 (1701).

²⁴ *Parker v. Flint*, 12 Mod. 254 (1701); *Harman v. Clarkson*, 22 Up. Can. C. P. 291 (1871).

²⁵ *Stott v. Churchill*, 15 N. Y. Misc. 80, 36 N. Y. Supp. 476 (1895); *Sandys v. Florence*, 47 L. J. C. P. (Eng.) 598 (1878).

²⁶ *Weeks v. McNulty*, 101 Tenn. 495, 48 S. W. 809 (1898); *Clancy v. Barker*, 131 Fed. 161 (U. S. C. C. A. Neb. 1904).

²⁷ *Rommel v. Schambacher*, 120 Pa. 579, 11 Atl. 779, 6 Am. St. Rep. 732 (1887). And see to the same effect *Curran v. Olson*, 88 Minn. 307, 92 N. W. 1124 (1903).

in which he knows there is a contagious disease is responsible to the guest if he contracts the disease.²⁸

§ 172. Protection against injury by servants.

As the innkeeper must protect a guest against third persons, *a fortiori* he must protect him against injuries from his servants. And since the servants are provided, among other things, for the purpose of protecting guests, every injury inflicted upon the guest by the servant, either intentionally or negligently, is a breach of his duty of protection, and renders the innkeeper liable to the guest.²⁹ The innkeeper's duty, the breach of which by his servant causes the injury, is not the negative duty not to assault the guest, but the affirmative duty to protect him from assault. The servant, in assaulting the guest, is committing the tort for himself; but he is breaking the obligation of protection which rests on the innkeeper, and which the servant has himself been employed to carry out. This is recognized in the well-considered cases as the true ground of liability.³⁰

"If, then, the defendants were under a contractual obligation that the plaintiff and his family should be treated with due consideration for their comfort and safety, the act of the servant, resulting in the injuries complained of, obviously amounts to a breach of contract. That the wrongful act was committed by a servant is wholly immaterial. The rule which requires that a guest at a hotel be treated with due consideration for his comfort and safety would be of little value if limited to the proprietor himself. As a rule, he does not come in contact with

²⁸ *Gilbert v. Hoffman*, 66 Ia. 205, 55 Am. Rep. 263 n (1885); *Levy v. Corey*, 1 City Ct. Rep. Supp. 57 (1884).

²⁹ *Wade v. Thayer*, 40 Cal. 578 (1871); *Overstreet v. Moser*, 88 Mo. App. 72 (1901); *Clancy v. Barker*, (Neb.), 98 N. W. 440 (1904); *Curran v. Olson*, 88 Minn. 307, 92 N. W. 1124 (1903). In *Block v. Sherry*, 43 N. Y. Misc. 342, 87 N. Y. Supp. 160 (1904), even a restaurant keeper, whose liability is less than that of an innkeeper, was held liable for the negligent spilling of water on a customer by a waiter.

³⁰ *Curran v. Olson*, 88 Minn. 307, 92 N. W. 1124 (1903); *Clancy v. Barker* (Neb.), 98 N. W. 440 (1904); *Rommel v. Schambacher*, 120 Pa. 579, 11 Atl. 779, 6 Am. St. Rep. 732 (1887).

the guests. His undertaking is not that he personally shall treat them with due consideration, but that they shall be so treated while inmates of the hotel as guests; and, if they be not thus treated, there is a breach of the implied contract, whether the lack of such treatment is the result of some act or omission of the proprietor himself, or of his servant or servants.

“Neither do we deem it material whether the servant at the time of the injury was actively engaged in the discharge of his duty as servant or not. He was a servant of the proprietor, and an inmate of the hotel. His duty as to the treatment to be accorded the guests of the hotel was a continuing one, and rested upon him wherever, within the hotel, he was brought in contact with them. To hold otherwise would be to say that a guest would have no redress for any manner of indignity received at a hotel, so long as it was inflicted by a servant not actively engaged in the discharge of some duty.” ³¹

§ 173. Cases limiting the duty.

This principle, however, has not been accepted by all courts. In the case of *Clancy v. Barker* in the Circuit Court of Appeals³² it appeared that the plaintiff, a boy about six years old, who was a guest at the defendant's inn, entered a room in which he heard someone playing a harmonica, actuated, apparently, by no other motive than childish curiosity, and found a boy, who was employed about the hotel either as a bell boy or porter, engaged in playing the instrument. Another boy who ran the hotel elevator was also in the room. Both of these employees of the hotel seem to have been off duty at the time, and engaged in amusing themselves in a room that was not occupied by guests. As the boy Clancy entered the room, the boy who was playing the harmonica said to him, evidently in jest, “See here, young fellow; if you touch anything, here is what you will get,” at the same time pointing a pistol at him. The pistol was accidentally discharged, the ball strik-

³¹ Albert, C., in *Clancy v. Barker*, *supra*.

³² 131 Fed. Rep. 161, 66 C. C. A. 469 (1904).

ing the boy in the head, fracturing "the frontal ethmoid and sphenoid bones of the head," and destroying one of his eyes. The ball also passed through the boy's thumb; but the injury did not prove fatal. It was urged that the defendant was liable in the case, irrespective of the question whether the servant was acting in the course of his service; but a majority of the court held otherwise. Circuit Judge Sanborn thus attempted to distinguish the case of the innkeeper from that of the carrier:

"There is a marked difference in the character of the contracts of carriage on a railroad or steamboat and of entertainment at an inn, and a wide difference in the relations of the parties to these contracts. In the former, the carrier takes and the passenger surrenders to him the control and dominion of his person, and the chief, nay, practically the only, occupation of both parties is the performance of the contract of carriage. For the time being all other occupations are subordinate to the transportation. The carrier regulates the movements of the passenger, assigns him his seat or berth, and determines when, how, and where he shall ride, eat, and sleep, while the passenger submits to the rules, regulations and directions of the carrier, and is transported in the manner the latter directs. The contract is that the passenger will surrender the direction and dominion of his person to the servants of the carrier, to be transported in the car, seat or berth and in the manner in which they direct, and that the latter will take charge of and transport the person of the passenger safely. The logical and necessary result of this relation of the parties is that every servant of the carrier who is employed in assisting to transport the passenger safely, every conductor, brakeman and porter who is employed to assist in the transportation, is constantly acting within the scope and course of his employment while he is upon the train or boat, because he is one of those selected by his master and placed in charge of the person of the passenger to safely transport him to his destination. Any negligent or willful act of such a servant which

inflicts injury upon the passenger is necessarily a breach of the master's contract of safe carriage, and for it the latter must respond. But the contract of an innkeeper with his guest, and their relations to each other, are not of this character. The innkeeper does not take, nor does the guest surrender, the control or dominion of the latter's person. The performance of the contract of entertainment is not the chief occupation of the parties, but it is subordinate to the ordinary business or pleasure of the guest. The innkeeper assigns a room to his guest, but neither he nor his servants direct him when or how he shall occupy it; but they leave him free to use or to fail to use it, and all the other means of entertainment proffered, when and as he chooses, and to retain the uncontrolled dominion of his person and of his movements. The agreement is not that the guest shall surrender the control of his person and action to the servants of the innkeeper, in order that he may be protected from injury and entertained. It is that the guest may retain the direction of his own action, that he may enjoy the entertainment offered, and that the innkeeper will exercise ordinary care to provide for his comfort and safety. The servants of the innkeeper are not placed in charge of the person of the guest, to direct, guide, and control his location and action, nor are they employed to perform any contract to insure his safety; but they are engaged in the execution of the agreement of the master to exercise ordinary care for the comfort and safety of the visitor. The natural and logical result of this relation of the parties is that when the servants are not engaged in the course or scope of their employment, although they may be present in the hotel, they are not performing their master's contract, and he is not liable for their negligent or willful acts."

In a California case, also, it was held that while the innkeeper must employ careful servants, and would be liable for negligence in employing his servants, and would furthermore be liable if he personally stood by and saw his servant injure a guest, yet he could not be held liable for an assault by his serv-

ant on a guest in the absence of personal negligence. The innkeeper's responsibility, the court said, is distinguishable from that of the carrier.³³

§ 174. The true extent of the duty.

These must be regarded as ill-considered decisions. The obligation of the carrier and of the innkeeper in this respect must be placed on the same ground. This is not, as seems to have been thought in the cases, a supposed duty to insure the safety of the guest; such a duty, it is admitted, does not exist. It is rather a duty of the carrier to protect his passenger from injury and of an innkeeper to protect his guest from injury to the best of his ability, by the use of reasonable means. The innkeeper must take reasonable steps to protect his guests. His method of so doing is, among other things, to provide servants; and every such servant is at all times under a duty to protect the guest from threatened harm while he is within the inn (though probably not while outside the inn) in so far as he is able. In all cases where the injury is by the servant himself and he could by reasonable care have avoided the injury the innkeeper should be held responsible for the failure of the servant to perform the delegated duty of protecting the guest.

The arguments advanced in favor of the limited responsibility are, it seems, fully met by Circuit Judge Thayer in his dissenting opinion in *Clancy v. Barker*.³⁴

"If a servant of a hotel, when off duty, should meet a guest outside of the hotel, and not on the premises, and there assault him, it is doubtless true—although the case at bar requires no decision on that point—that the innkeeper could not be charged with responsibility for the servant's conduct; and it is probably true that the innkeeper would not be responsible for an assault

³³ *Rahmel v. Lehndorff*, 142 Cal. 681, 76 Pac. 659, 65 L. R. A. 88 (1904). The court was unable to find decisions on the exact point; overlooking, of course, the decisions examined in this and the preceding sections.

³⁴ 131 Fed. Rep. 161, 66 C. C. A. 469 (1904).

committed on one of his guests within the hotel by a stranger, provided he has taken all reasonable precautions to prevent such occurrences by excluding disorderly persons from his premises. But in my opinion the law casts on the innkeeper an obligation to see to it that his guest is not injured, while within the hotel, by the wrongful, inconsiderate, or negligent acts of those who are his servants. . . .

“Now, it is true that a hotel is an immovable structure and does not run on wheels like a train of cars; but in all other respects the relation existing between an innkeeper and his guest is like that existing between a carrier and passenger, and this fact has always been recognized, as shown by the cases above cited. An innkeeper, like a carrier, is engaged in a quasi-public service. When he embarks in the business of keeping a hotel, he is bound to provide entertainment for all travellers who seek a place of rest and refreshment, provided they come to him in a fit condition to be entertained as guests, and are able to pay the customary charges. . . . The innkeeper, like the carrier, has the exclusive right to select all of the persons who are to aid him in the discharge of his quasi-public functions. I have been unable, therefore, to discover any sufficient reason why he should not be held responsible to his guests for the consequences of any willful and wrongful acts of his servants, committed within the hotel, to the same extent that the carrier is responsible to his passengers for like wrongful acts of its servants; and within the authorities above cited a carrier would be clearly responsible to one of its passengers for an injury inflicted by one of its employees under such circumstances as those disclosed in the present case.”

§ 175. Protection against one who has a right to remain in the inn.

Where, however, the innkeeper is so situated that he is unable to exclude a certain person from the inn or to control that person's acts, he is not liable for injury done by such person, in the absence of negligence. Thus, where a married woman kept an inn, and her husband, who lived in the inn, injured a

guest, the innkeeper was held not to be liable in the absence of negligence.³⁵ The court pointed out that the wife could not control, direct or discharge her husband, who had a right of homestead in the premises; and even though he acted as her servant about the inn, she could not be made liable for his act.

§ 176. Duty to protect against fire.

The innkeeper is bound to protect his guest against injury by fire through his negligence, but is not an insurer against injury by fire;³⁶ and it has been held that he is bound to warn his guests when a fire breaks out on the premises,³⁷ but this must surely depend upon the circumstances. It seems clear that he should provide proper fire escapes, and indeed the law usually requires it; but he is not responsible for injury to the guest by fire, even if proper fire escapes were not provided, unless the injury was caused by the lack of fire escapes.³⁸

³⁵ *Curtis v. Dinneen*, 4 Dak. 245, 30 N. W. 148 (1886).

³⁶ *Weeks v. McNulty*, 101 Tenn. 495, 48 S. W. 809 (1898).

³⁷ *Hare v. Henderson*, 43 Up. Can. Q. B. 571 (1878).

³⁸ *Weeks v. McNulty*, 101 Tenn. 495, 48 S. W. 809 (1898).

CHAPTER XV.

RESPONSIBILITY OF THE INNKEEPER FOR GOODS OF THE GUEST.

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§ 181. The innkeeper as a protector against marauders.

The liability of the innkeeper for the goods of the guest has been enforced from very early times; and its nature can best be learned from a consideration of the original function of the innkeeper. As has already been seen, the inn was established for the entertainment of travellers on their journey; and particularly to protect them against the bands of marauders and outlaws that infested the roads at night. The most important function of the innkeeper, therefore, after the furnishing of food and drink, was the protection which he offered to the weary traveller against nocturnal robbers. If a traveller were robbed at an inn, it was necessarily from defect of care of the innkeeper, since he undertook to protect against such a misfortune.

It was therefore decided as early as the year 1368 that the innkeeper is responsible for the goods of his guest stolen from the inn. In the earliest case ¹ the loss was alleged to be "for

¹ Y. B. 42 Ed. 3, 11, pl. 13 (1367).

defect of guard of the innkeeper and his servants." This case was followed in the same year by another decision of Justice Knivet after consultation with all the Justices and Serjeants at Law: "and the reason of the judgment was that he became answerable, for himself and his servants, for the chambers and stables." ²

As was well and forcibly said by Judge Cochrane in *Crapo v. Rockwell*: ³ "This rigorous rule had its origin in the feudal conditions which were the outgrowth of the Middle Ages. In those days there was little safety outside of castles and fortified towns for the wayfaring traveller, who, exposed on his journey to the depredations of bandits and brigands, had little protection when he sought at night temporary refuge at the wayside inns, established and conducted for his entertainment and convenience. Exposed as he was to robbery and violence, he was compelled to repose confidence, when stopping on his pilgrimages over night, in landlords who were not exempt from temptation; and hence there grew up the salutary principle that a host owed to his guest the duty, not only of hospitality, but also of protection. With the march of civilization and the progress of commercial development, the conditions in which the common-law liability of the innkeeper to his guest originated have passed away; but other conditions exist, which render it wise and expedient that the modern hotel keeper should respond for the loss of his guest's property while he is extending to the latter for compensation his hospitality, and there has consequently been no relaxation in the rule of his common-law liability, except as such liability has been modified by statute."

§ 182. Innkeeper's responsibility not a case of bailment.

This principle has often been thought to depend upon the law of bailment; and indeed the responsibility of the innkeeper is treated as one kind of bailment-obligation in the treatises on

² Y. B. 42 Lib. Assis. 260, pl. 17 (1367).

³ 94 N. Y. Supp. 1122 (1905).

the law of bailments; being treated, along with that of the common carrier, as an example of bailments where the responsibility is exceptionally severe.⁴

In the earlier cases the innkeeper seems not to have been thought of as a bailee. In the leading case of *Coggs v. Bernard*,⁵ in which the law of bailments was elaborately considered, the innkeeper was not mentioned, either in connection with the common carrier or otherwise, as an example of a bailee; and in the great case of *Lane v. Cotton*,⁶ while Lord Holt mentioned the innkeeper as in a public employment, it was not suggested that he is a bailee. Sir William Jones was probably the first to speak of an innkeeper as a bailee,⁷ though he would exempt the innkeeper from liability if he used ordinary care. Judge Story⁸ follows Jones in placing innkeepers among the bailees.

If Sir William Jones was really the first authority who distinctly included innkeepers among bailees, the fact is significant; for he, as is well known, was a distinguished student of Roman law, and introduced the principles of the civil law, so far at least as analysis and nomenclature are concerned, into the English law of bailment. In placing innkeepers among bailees he was doubtless influenced by a supposed rule of the Roman law, expressed in one of the classical texts of the Digest: to wit, the section "*Nautæ caupones stabularii*,"⁹ which was believed to be the foundation of the English law of bailment. The literal text itself shows that it cannot be the basis of the English law either of carriers or of innkeepers; but the asso-

⁴ "Exceptional rules and exceptional responsibility confront us, when we come to regard innkeepers and common carriers; not that they are more or less than bailees, as to the method of performance, but because public policy sees fit to clothe those who regularly pursue these vocations with a bailment responsibility confided to them, unusually great, and in fact approximating insurance." Schouler, *Bailments*, 14.

⁵ 2 Ld. Raym. 909 (1703).

⁶ 12 Mod. 472 (1701).

⁷ Jones, *Bailments* (1781), 95.

⁸ *Bailments* (1832), § 4.

⁹ Dig. 4, 9, 1. "*Nautæ caupones stabularii, quod cuiusque saluum fore receperint, nisi restituant, in eos iudicium dabo.*"

ciation of persons supposed to correspond to innkeepers with persons supposed to represent the whole class of carriers (*Nautæ*) led to a belief that the responsibility of the innkeeper and that of the carrier were similar.

It is obvious, however, that the responsibility of the innkeeper is not that of a bailee of any sort; for the crucial test of bailment, delivery of possession to the bailee, is lacking. The innkeeper's responsibility does not depend in any degree upon delivery to him of the goods for which he is held liable.¹⁰ In the earliest case in which he was held answerable for the goods stolen he attempted to avoid liability by pleading that the guest had not delivered the goods to him, but had put them in the chamber; but judgment was given for the guest upon this plea.¹¹ The responsibility must therefore be rested upon the public undertaking of the innkeeper, rather than upon his position as bailee.

§ 183. History of innkeeper's responsibility in England.

The English law until within a century seems not to have lost sight of the origin and true ground of liability of the innkeeper. In the leading case on the subject, *Calye's case*,¹² it was resolved that "the innholder shall not be charged, unless there be a default in him or his servants, in the well and safe keeping and custody of their guest's goods and chattels within his common inn; for the innkeeper is bound in law to keep them safe without any stealing or purloining." No trace can be found in the reports or abridgements of any different doctrine until the case of *Richmond v. Smith*.¹³ This was a case which turned on the innkeeper's responsibility for a package carried at the request of the guest into the "commercial room," a common room of the inn; and therefore the question now under discussion was not involved in that case. In that case,

¹⁰ *Ante*, § 148.

¹¹ Y. B. 42 Ed. 3, 11, pl. 13 (1367).

¹² 8 Coke 63 (1574).

¹³ 8 B. & C. 9 (1828).

however, for the first time, in a judicial decision, the court likened the innkeeper to the common carrier; and Mr. Justice Bayley used language which seemed to carry his responsibility for loss as far as that of the common carrier. "It appears to me that an innkeeper's liability very closely resembles that of a carrier. He is *prima facie* liable for any loss not occasioned by the act of God or the king's enemies; although he may be exonerated where the guest chooses to have his goods under his own care."

In *Dawson v. Chamney*,¹⁴ Lord Chief Justice Denman again laid down the old rule as it was stated in *Calye's case*, to the effect that the carrier is not liable except for negligence; and he rightly explained the language of Bayley, J., just quoted, as applying to "another branch of the doctrine, namely, the exception from the rule which arises where the guest chooses to take the chattels entirely under his own care."

Later in *Morgan v. Ravey*,¹⁵ the court again laid down the more extreme rule. Chief Baron Pollock said:

"It remains to consider whether the direction to the jury was correct. We think it was. The objection was that it assumed the defendants were liable if there was no negligence in the plaintiff, and that therefore the defendants would be liable, though not only not negligent, but even diligent. But we think that is the law. It is true the expression in the forms in "tort" is, that the loss was "*propter defectum*" of the innkeeper; but we think the cases show that there is a defect in the innkeeper, wherever there is a loss not arising from the plaintiff's negligence, the act of God, or the Queen's enemies."

The court criticized *Dawson v. Chamney* as the only case opposed to this view. And in the later case of *Day v. Bather*,¹⁶ the rule of extreme liability is assumed by the court. It is probable, therefore, that in England to-day the rule that the

¹⁴ 5 Q. B. 164, D. & M. 348 (Eng. 1843).

¹⁵ 6 H. & N. 265 (1861).

¹⁶ 2 H. & C. 14 (1863). *Acc. Butler v. Quilter* (Eng. 1900), 17 T. L. R. 159.

innkeeper is liable for all loss, except what is caused by act of God or the king's enemies or by negligence of the guest himself, is established. And this is also held in the British colonies.¹⁷

§ 184. In the United States.

In this country, as might naturally have been expected considering the history of the English doctrine, there has been much confusion as to the true rule for innkeeper's liability for loss of goods. Judge Story's authority is in favor of the rule laid down in the earlier cases. "Innkeepers," he says,¹⁸ "are not responsible to the same extent as common carriers;" and he adds that the innkeeper may repel the presumption of negligence "by showing that there has been no negligence whatsoever, or that the loss is attributable to the personal negligence of the guest himself, or that it has been occasioned by inevitable casualty or by superior force." The decisions, however, have not uniformly followed Judge Story's opinion. While they are almost always based on the language of the court in *Calye's* case, they are in hopeless disagreement as to whether or not the rule in *Calye's* case calls for personal default on the part of the innkeeper or his servant before the innkeeper can be held liable for a loss of the goods of the guest. Some minor differences may be found in the language of the decisions, but in general the rules laid down may be reduced to three.

§ 185. Jurisdictions imposing the insurance liability.

In perhaps a majority of the jurisdictions the court has clearly imposed upon the innkeeper the liability analogous to that of the common carrier, adopting the language of Chancellor Kent.¹⁹ The rule as commonly stated in these jurisdictions is that the innkeeper is liable for the goods of the guest lost in the inn, unless the loss has been by act of God or of a

¹⁷ *Nott v. Maclurgan*, 20 W. N. (N. S. W.) 135 (1903); *Miller v. Federal Coffee Palace*, 15 Victorian Law R. 30 (1889).

¹⁸ *Bailments*, § 472.

¹⁹ 2 Kent Conn. 594.

public enemy or by fault of the owner.²⁰ The extent and reason of this doctrine are well expressed by Mr. Justice Wilde in *Mason v. Thompson*:²¹ “Nothing is better settled than the general principle, that innkeepers are chargeable for the goods of their guests lost or stolen from their inns. This liability is imposed upon them for considerations of public policy, for the security of travellers, and to protect them not only against the negligence, but also against the dishonest practices of the innkeeper or his servants. And from long experience it has been found to be a salutary principle of public policy. It may undoubtedly, in some cases, subject the innkeeper to losses, without any negligence or fault on his part. This may seem hard and unjust, but hard cases are not always to be avoided, and a wholesome rigor is sometimes necessary, to insure public security. It is, however, no more hard for an innkeeper than for his guest, to sustain a loss, neither party being in fault; especially when the former undertakes a trade with a full knowledge of his liabilities, for he may so regulate his charges as to indemnify himself. Innkeepers, as well as common carriers, are regarded as insurers of the property committed to their care, and are bound to make restitution for any injury or loss not caused by the act of God, or the common enemy, or the neglect or fault of the owner of the property.”

Under this rule the innkeeper is excused if the loss happens by act of God or the king's enemies; but even if the goods are

²⁰ *Mateer v. Brown*, 1 Cal. 221, 52 Am. Dec. 303 (1850); *Russell v. Fagan*, 7 Houst. 389, 8 Atl. 258 (Del. 1886); *Shaw v. Berry*, 31 Me. 478, 52 Am. Dec. 628 (1850); *Norcross v. Norcross*, 53 Me. 163 (1865); *Mason v. Thompson*, 9 Pick. (Mass.) 280, 20 Am. Dec. 471 (1830); *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882); *Sibley v. Aldrich*, 33 N. H. 553, 66 Am. Dec. 745 (1856); *Hulett v. Swift*, 33 N. Y. 571, 88 Am. Dec. 405 (1865), affirming S. C., 42 Barb. 230 (1864); *Gile v. Libby*, 36 Barb. 70 (N. Y. 1861); *Classon v. Leopold*, 2 Sweeny (N. Y.), 705 (1870); *Lucia v. Omel*, 53 N. Y. App. Div. 641, 66 N. Y. Supp. 1136 (1900); *Willard v. Reinhardt*, 2 E. D. Smith (N. Y.), 148 (1853); *Gast v. Gooding*, 1 Ohio Dec. 315 (1849); *Cunningham v. Bucky*, 42 W. Va. 671, 26 S. E. 442, 35 L. R. A. 850 (1896); *Jalie v. Cardinal*, 35 Wis. 118 (1874).

²¹ 9 Pick. 283 (1830).

injured by act of God (a sudden and unusual storm) the innkeeper is liable if he negligently fail to protect them against the storm.²²

§ 186. Jurisdiction imposing liability of innkeepers for negligence only.

In several jurisdictions a much less stringent rule is laid down, the innkeeper being held liable for loss of goods in the inn only if he is negligent personally, or by his servants.²³ "It is a harsh rule," said Judge Trumbull in *Metcalf v. Hess*,²⁴ "which makes a person in any case responsible for a loss which has occurred without any fault of his, and it can only be justified upon grounds of public policy, and in consideration of the numerous opportunities afforded by the nature of his business, for fraudulent combination and clandestine dealing, to the injury of the owner of the property. The rule ought not to be extended beyond the reason in which it originated."

The rule which appears to prevail in Kentucky is that as to goods of the guest actually deposited with the innkeeper, he is under a bailee's liability substantially like that of the common carrier, "approximating insurance;"²⁵ but as to goods kept under the control of the guest, while he is to take "uncommon care" to protect them²⁶ he is not responsible for their loss if it happened by mere accident for which he is in no degree responsible.²⁷

²² *Scheffer v. Corson*, 5 S. D. 233, 58 N. W. 555 (1894).

²³ *Johnson v. Richardson*, 17 Ill. 302, 63 Am. Dec. 369 (1855); *Metcalf v. Hess*, 14 Ill. 129 (1852); *Baker v. Dessauer*, 49 Ind. 28 (1874); *Laird v. Eichold*, 10 Ind. 212, 71 Am. Dec. 323 (1858) (overruling a dictum to the contrary in *Thickstun v. Howard*, 8 Blackf. [Ind.] 535 [1847]); *Hill v. Owen*, 5 Blackf. (Ind.) 323, 35 Am. Dec. 124 (1840); *Woodworth v. Morse*, 18 La. Ann. 156 (1866) (Civil Law); *Towson v. Havre de Grace Bank*, 6 Har. & J. (Md.) 47, 14 Am. Dec. 254 (1823); *Cutler v. Bonney*, 30 Mich. 259, 18 Am. Rep. 127 (1874); *Howth v. Franklin*, 20 Tex. 798 (1858); *Howe Machine Co. v. Pease*, 49 Vt. 477 (1877); *Merritt v. Claghorn*, 23 Vt. 177 (1851).

²⁴ 14 Ill. 129 (1852).

²⁵ *Weisenger v. Taylor*, 1 Bush (Ky.), 275 (1866).

²⁶ *Packard v. Northcraft*, 2 Metc. (Ky.) 439 (1859).

²⁷ *Vance v. Throckmorton*, 5 Bush (Ky.), 41, 96 Am. Dec. 327 (1869).

§ 187. Jurisdictions imposing liability for negligence or breach of undertaking.

A third form of rule, however, or it may be merely a more accurate way of stating the rule just examined, is that the innkeeper is liable either for actual negligence or for breach of his undertaking; that is, for failure to furnish entertainment, safe premises, and protection against theft. For failure in these matters which he specially undertakes he is responsible, with or without negligence; but for loss from any other cause he is liable only if the loss happened through his own negligence.²⁸ In *Johnson v. Chadbourn Furnace Co.*,²⁹ Judge Collins said: "The fact is that in nearly all of the cases supporting the doctrine of absolute liability unexplained thefts or losses of property were involved. No distinction was made between goods stolen and goods destroyed by fire for which the landlord was in no manner responsible. That there might be a well-defined distinction does not seem to have been thought of. . . . All losses of property incurred by guests at a public hotel or inn by fire are *prima facie* due to the negligence of the proprietor, but he may discharge or relieve himself from liability by showing that the loss happened by an irresistible force or unavoidable accident, such as a fire originating upon premises over which he has no control, without fault or negligence on his part. This doctrine does not infringe upon the common-law rule, which makes him responsible for all thefts from within his house, or unexplained, whether committed by guests, servants or strangers, upon the general principle that an innkeeper guarantees the good behavior of all who may be under his roof—particularly his servants."

§ 188. Loss by theft.

Loss of goods by theft on the part of the innkeeper's servants would clearly charge the innkeeper under any rule.³⁰ And

²⁸ *Johnson v. Chadbourn Furnace Co.*, 89 Minn. 310, 94 N. W. 874 (1903); *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854).

²⁹ 89 Minn. 310, 94 N. W. 874 (1903).

³⁰ *Walsh v. Porterfield*, 87 Pa. 376 (1878); *Shultz v. Wall*, 134 Pa. 262,

even if the goods are stolen by a stranger without actual negligence on the part of the innkeeper (unless they are stolen by someone for whom the guest is responsible) there is a breach of the innkeeper's obligation, and he should be held liable under any theory of liability.³¹

But in one or two cases, in which the least stringent liability is imposed, the innkeeper is exonerated from loss even by theft, if neither he nor his servants were negligent.³²

§ 189. Loss by accidental fire.

Loss by accidental fire, where the innkeeper was not negligent, charges the innkeeper or not according to the rule adopted in the jurisdiction concerned. In a State where the stringent liability is imposed, the innkeeper is liable for a loss by accidental fire.³³ But in jurisdictions which hold the innkeeper liable only for negligence or breach of undertaking, he is not responsible where the goods were lost by accidental fire.³⁴

§ 190. Presumption of negligence.

Whatever view is adopted, it is agreed that upon loss or injury to the goods being shown the innkeeper is *prima facie* liable, and the burden is upon him to prove such facts as will exonerate him.³⁵

19 Atl. 742, 26 Wkly. Notes Cas. 51, 19 Am. St. Rep. 686, 8 L. R. A. 97 (1890).

³¹ Lanier v. Youngblood, 73 Ala. 587 (1883); Sasseen v. Clark, 37 Ga. 242 (1867); Johnson v. Richardson, 17 Ill. 302, 63 Am. Dec. 369 (1855); Lusk v. Belote, 22 Minn. 468 (1876); Olson v. Crossman, 31 Minn. 222 (1883); Dunbier v. Day, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882); Wies v. Hoffman House, 28 N. Y. Misc. 225, 59 N. Y. Supp. 38 (1899); Gast v. Gooding, 1 Ohio Dec. 315 (1849); Newson v. Axon, 1 McCord (S. Car.), 509, 10 Am. Dec. 685 (1821); McDaniels v. Robinson, 26 Vt. 316, 62 Am. Dec. 574 (1854).

³² Baker v. Dessauer, 49 Ind. 28 (1874).

³³ Fay v. Pacific Improvement Co., 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188 (1891); Hulett v. Swift, 33 N. Y. 571, 88 Am. Dec. 405 (1865); Nott v. MacLurgan, 20 W. N. (N. S. W.) 135 (1903).

³⁴ Vance v. Throckmorton, 5 Bush (Ky.), 41, 96 Am. Dec. 327 (1869); Cutler v. Bonney, 30 Mich. 259, 18 Am. Rep. 127 (1874); Merritt v. Claghorn, 23 Vt. 177 (1851).

³⁵ Sasseen v. Clark, 37 Ga. 242 (1867); Johnson v. Richardson, 17 Ill. 302,

§ 191. For what goods the innkeeper is responsible.

The innkeeper's responsibility is not confined to goods of any particular kind, but extends to money ³⁶ and to all other personal property brought by the guest to the inn.³⁷

In Louisiana, however, being a State governed by the civil law, the innkeeper is absolutely responsible only for baggage and for money for immediate expenses, unless it is deposited with the innkeeper.³⁸ The same doctrine seems to be held also in Maryland where the innkeeper is held liable in case of loss for baggage only.³⁹ By baggage is meant articles for use on the journey or while a guest; it does not include silver knives, forks and spoons,⁴⁰ surgical instruments or pistols.⁴¹

63 Am. Dec. 369 (1855); *Eden v. Drey*, 75 Ill. App. 102 (1898); *Hulbert v. Hartman*, 79 Ill. App. 289 (1898); *Bowell v. De Wald*, 2 Ind. App. 303, 28 N. E. 430 (1891); *Burrows v. Trieber*, 21 Md. 320, 83 Am. Dec. 590 (1864); *Baehr v. Downey*, 133 Mich. 163, 94 N. W. 750, 10 Detroit Leg. N. 153 (1903); *Cheesebrough v. Taylor*, 12 Abb. Prac. (N. Y.) 227 (1860); *Murray v. Clarke*, 2 Daly, 102 (N. Y. 1866); *Quinton v. Courtney*, 1 Hayw. (N. C.) 40 (1794); *Jordan v. Boone*, 5 Rich. Law (S. C.), 528 (1875); *Howe Machine Co. v. Pease*, 49 Vt. 477 (1877).

³⁶ *Kent v. Shuckard*, 2 B. & Ad. 803, 1 L. J. K. B. 1 (Eng. 1831).

³⁷ *Eden v. Drey*, 75 Ill. App. 102 (1898); *Berkshire Woolen Co. v. Proctor*, 7 Cush. (Mass.) 417 (1851); *Smith v. Wilson*, 36 Minn. 334, 31 N. W. 176 (1887); *Wilkins v. Earle*, 44 N. Y. 172 (1870); *Taylor v. Monnot*, 1 Abb. Prac. (N. Y.) 325 (1854); *Van Wyck v. Howard*, 12 How. Pr. (N. Y.) 147 (1856); *Kellogg v. Sweeney*, 1 Lans. (N. Y.) 397 (1869). This is probably also the law in Georgia, *Sasseen v. Clark*, 37 Ga. 242 (1867), and in Kentucky, though there all goods not personally needed by the guest must be deposited with the innkeeper to make him liable at common law. *Weisenger v. Taylor*, 1 Bush (Ky.), 275, 89 Am. Dec. 626 (1867).

³⁸ *Simon v. Miller*, 7 La. Ann. 360 (1852); *Pope v. Hall*, 14 La. Ann. 324 (1859); *Profiel v. Hall*, 14 La. Ann. 524 (1859).

³⁹ *Pettigrew v. Barnum*, 11 Md. 434, 69 Am. Dec. 212 (1857); *Treiber v. Burrows*, 27 Md. 130 (1867).

⁴⁰ *Pettigrew v. Barnum*, 11 Md. 434, 69 Am. Dec. 212 (1857).

⁴¹ *Giles v. Fauntleroy*, 13 Md. 126 (1859).

CHAPTER XVI.

INNKEEPER'S RESPONSIBILITY AS A MERE BAILEE.

Topic I. Responsibility for goods of boarder.	§ 204. Responsibility of innkeeper when he takes the goods as a matter of business.
§ 201. Boarder not entitled to extraordinary responsibility of innkeeper.	205. Responsibility of innkeeper as gratuitous bailee.
202. Innkeeper is ordinary bailee for hire of boarder's goods.	206. Responsibility for misdelivery.
Topic II. Responsibility for goods of one neither guest nor boarder.	Topic III. Responsibility for goods of guest outside the inn.
203. Goods placed in the inn by one not a guest or boarder.	207. Goods in bath house attached to inn.

TOPIC I.

RESPONSIBILITY FOR GOODS OF BOARDER.

§ 201. Boarder not entitled to extraordinary responsibility of innkeeper.

A boarder at an inn is not entitled to the exceptional responsibility of the innkeeper for the goods of his guest.¹ So where money is deposited in the office safe and is stolen by a clerk who was not negligently employed,² and where goods are stolen

¹ *Jeffords v. Crump*, 2 Phila. (Pa.) 500 (1878); *Vance v. Throckmorton*, 5 Bush (Ky.), 41, 96 Am. Dec. 327 (1869); *Manning v. Wells*, 9 Humph. (Tenn.) 746, 51 Am. Dec. 688 (1849); *Lusk v. Belote*, 22 Minn. 468 (1876), *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Barber v. Harrison*, 6 City Hall Rec. (N. Y.) 89 (1821); *Wiser v. Chesley*, 53 Mo. 547 (1873); *Neal v. Wilcox*, 4 Jones (N. C.), 146 (1856).

² *Taylor v. Downey*, 104 Mich. 532, 62 N. W. 716, 53 Am. St. Rep. 472, 29 L. R. A. 92 (1895); *Hutchinson v. Donovan*, 76 Mo. App. 391 (1898); *Johnson v. Reynolds*, 3 Kan. 257 (1865).

from the chamber of the guest,³ the innkeeper is not responsible. Thus, in one of the cases just cited, *Johnson v. Reynolds*, the plaintiff, a regular boarder in the defendant's inn, deposited three hundred and thirty-eight dollars in gold, done up in a rag marked \$338, with the defendant. The defendant put it in his safe, from which it was stolen by burglars. The defendant was held not to be liable as innkeeper, but only as bailee. So in the old case of *Barber v. Harrison*, cited in the last note, it appeared that the defendant kept an inn, in the city of New York, and that the plaintiff, an inhabitant of the city, was boarding at the inn, paying the regular price for boarders, which was less than that for transient guests. The plaintiff occupied a double room, into which the defendant was accustomed to put lodgers without objection by the defendant. "A man of genteel appearance, representing himself as on his way from Philadelphia to Albany" was put into the room, and during the night carried off the plaintiff's clothes, watch, and certain valuable papers. Ordinary care and diligence was used by the innkeeper to the plaintiff, and there was no lack of care on the part of the servants of the inn. The court held that since the plaintiff was merely a boarder the defendant was not liable.

"A passenger or wayfaring man may be an entire stranger. He must put up and lodge at the inn to which his day's journey may bring him. It is therefore important that he should be protected by the most stringent rules of law, enforcing the liability of the innkeeper. In such case, therefore, the law makes the innkeeper an insurer of the goods of his guest except as to losses occasioned by the act of God or public enemies. But as a boarder he does not need such protection, the law does not afford it. It is sufficient to give him a remedy when he shall prove the innkeeper has been guilty of culpable negligence." ⁴

³ *Haff v. Adams* (Ari.), 59 Pac. 111 (1899); *Chamberlain v. Masterton*, 26 Ala. 371 (1855); *Barber v. Harrison*, 6 City Hall Rec. (N. Y.) 89 (1821); *Manning v. Wells*, 9 Humph. (Tenn.) 746, 51 Am. Dec. 688 (1849); *Meacham v. Galloway*, 102 Tenn. 415, 52 S. W. 859 (1899).

⁴ *Manning v. Wells*, 9 Humph. (Tenn.) 746, 51 Am. Dec. 688 (1849).

Where a portion of a man's family were boarders at a hotel, and while he was visiting them as a transient guest some of the goods of the guest and of his family were stolen, the innkeeper was held liable as such for the guest's goods, but only as ordinary bailee for the goods of the other members of the family.⁵

§ 202. Innkeeper is ordinary bailee for hire of boarder's goods.

But the innkeeper in such a case is obviously a bailee for hire; the care of the boarder's goods being as much a part of his undertaking, for which he is paid, as the care of the goods of a guest. He does not receive the boarder as part of his public duty and therefore does not undertake the extreme responsibility undertaken toward the guest's goods; but he receives the boarder and his goods to be entertained and cared for in the same way that a guest is entertained and cared for, with the single exception that he does not offer his house to a boarder as a refuge from the perils of the road. For any injury to the goods, which an innkeeper carrying on his business in the ordinary way should have guarded against, the innkeeper ought to be liable. This is usually expressed, in the language ordinarily used in connection with bailments, as that duty of "ordinary care" which is due in bailments for the mutual benefit.⁶ This is true whether the boarder keeps the goods in his own hands or delivers them to the innkeeper, though those are circumstances which without affecting the legal duty of care are to be considered in determining whether in fact due care has been lacking.

"The nature of the liability is not changed by a deposit in the safe, though the degree of care may be increased over that required where the boarder retains the custody of valuables; but the keeper of the house is still a bailee for mutual benefit, and still owes the duty of ordinary care, which varies in degree

⁵ Lusk v. Belote, 22 Minn. 468 (1876).

⁶ Taylor v. Downey, 104 Mich. 532, 62 N. W. 716, 53 Am. St. Rep. 472, 29 L. R. A. 92 (1895).

as the responsibility is thrown upon him, or is assumed by the owner." ⁷

TOPIC II.

RESPONSIBILITY FOR GOODS OF ONE NEITHER GUEST NOR BOARDER.

§ 203. Goods placed in the inn by one not a guest or boarder.

Where goods are placed within the inn and in the care of the innkeeper by one who is not a guest, the innkeeper is not responsible as such, but only as an ordinary bailee.⁸ This is true, even though at the time he gave the goods to the innkeeper the owner *bona fide* intended to become a guest. The question was discussed in an English case.⁹ The plaintiff arrived at the railway station at Carlisle, and was there met by one of the porters of the defendant's hotel, which adjoined the railway station. He delivered his luggage to the porter, and went to the hotel, intending to pass the night there; but after reading a telegram which he found waiting for him at the office, he decided to go on to Manchester the same day. He went to the coffee room to dine, but was told that there was no joint ready, and proceeded, by the waiter's advice, to the station refreshment room, which was under the same management as the hotel, and connected with it by a covered passage. On his way to the refreshment room he met the porter with his luggage, and told him to lock it up till he was ready to start for Manchester. The luggage was locked up in a room adjoining the refreshment room, but on the plaintiff's arrival at the platform, part of it was found to be missing.

⁷ Per Curiam, in *Taylor v. Downey*, 104 Mich. 532, 62 N. W. 716, 53 Am. St. Rep. 472, 29 L. R. A. 92 (1895).

⁸ *Centlivre v. Ryder*, 1 Edm. Sel. Cas. (N. Y.) 273 (1846); *Toub v. Schmidt* 60 Hun (N. Y.), 409, 15 N. Y. Supp. 616 (1891); *Tulane Hotel Co. v. Holohan*, 112 Tenn. 214, 79 S. W. 113 (1903); *Bernard v. Lalond*, 8 Leg. News (Can.), 215 (1885); *Holmes v. Moore*, 17 L. C. R. 143 (1867).

⁹ *Strauss v. County H. & W. Co.*, 12 Q. B. D. 27, 53 L. J. Q. B. 25, 49 L. T. 601, 32 W. R. 170, 48 J. P. 69 (Eng. 1883).

The court held that the plaintiff had not become a guest, since his only entertainment by the defendant was in the refreshment room, a place outside the precincts of the inn; and that there was no proof of negligence on the part of the defendant. Mr. Justice Mathews said that at the time the plaintiff gave his luggage to the porter he had not made up his mind to become a guest. This seems not to be consistent with the facts as stated; but the case did not turn on the point. His *bona fide* intention to become a guest at the inn is clear at the time he gave the luggage to the porter.

The principle was carried to an extreme in the case where a person engaged a room for the storage of his goods, not intending himself to occupy the room; it was held under these circumstances that the owner of the goods was not a guest and that the innkeeper's liability was that of an ordinary bailee.¹⁰

§ 204. Responsibility of innkeeper when he takes the goods as a matter of business.

When the innkeeper takes the goods as a matter of business in connection with his trade of innkeeper, whether he receives compensation especially for keeping the goods or keeps them without additional compensation, he is liable not as an insurer but as an ordinary bailee.

So where a commercial traveller brings goods to an inn under such circumstances that the innkeeper is not responsible as such for the goods, he is nevertheless bound to exercise care for their protection, and is liable for a loss occasioned by his negligence.¹¹ And so an innkeeper who takes horses to board for one not a guest is responsible for them only as a bailee for hire.¹²

On this principle while an innkeeper is liable for the negligent loss of goods left at the inn by a guest upon his departure,¹³

¹⁰ Bunn v. Johnson, 77 Mo. App. 596 (1898).

¹¹ Myers v. Cottrill, 5 Biss. 465, Fed. Cas. 9,985 (1873); Scheffer v. Corson, 5 S. D. 233, 58 N. W. 555 (1894).

¹² Ingallsbee v. Wood, 33 N. Y. 577, 88 Am. Dec. 405 (1865), affirming S. C., 36 Barb. 452.

¹³ Murray v. Clarke, 2 Daly (N. Y.), 102 (1866); Coykendall v. Eaton, 55

his responsibility is that of an ordinary bailee for hire, and he is therefore liable if the goods are lost or injured through his neglect of care.

In a few cases the liability of the innkeeper in such a case is spoken of as that of a gratuitous bailee, who is held only for damage caused by his gross negligence.¹⁴

§ 205. Responsibility of innkeeper as gratuitous bailee.

Where goods are left within the inn with consent of the innkeeper by one not a guest, the innkeeper must take due care of the goods, and is liable for a loss caused by his negligence.¹⁵

Even as a gratuitous bailee he is liable for loss or injury to the goods caused by his gross negligence.¹⁶

It is usually enough that he takes as much care of the goods so deposited as he does of his own; but, when the keeper of a coffee house left money, entrusted to him for the purpose of taking up a bill, in his cash box in his taproom, where it was lost, together with a much larger sum of his own, there was held to be evidence of gross negligence sufficient to go to the jury.¹⁷

Barb. (N. Y.) 188, 37 How. Pr. 438 (1869); *George v. Depierris*, 17 N. Y. Misc. 400, 39 N. Y. Supp. 1082 (1896).

¹⁴ *Johnson v. Reynolds*, 3 Kan. 257 (1865); *Jeffords v. Crump*, 12 Phila. (Pa.) 500 (1878). In *Lawrence v. Howard*, 1 Utah, 142 (1874), sometimes cited to the same point, the ground of decision was that the goods had been left behind by the boarder, without any agreement with the innkeeper, who was therefore in fact only a gratuitous bailee.

¹⁵ *Wear v. Gleason*, 52 Ark. 364, 12 S. W. 756, 20 Am. St. Rep. 186 (1889); *Stewart v. Head*, 70 Ga. 449 (1883); *Wiser v. Chesley*, 53 Mo. 547 (1873); *Ingallsbee v. Wood*, 33 N. Y. 577, 88 Am. Dec. 405 (1865); *Centlivre v. Ryder*, 1 Edm. Sel. Cas. (N. Y.) 273 (1846); *Toub v. Schmidt*, 60 Hun (N. Y.), 409, 15 N. Y. Supp. 616 (1891); *Arcade Hotel Co. v. Wiatt*, 44 Ohio. St. 32, 4 N. E. 398 (1886); *Tulane Hotel Co. v. Holohan*, 112 Tenn. 214, 79 S. W. 113 (1903); *Bernard v. Lalond*, 8 Leg. News, 215 (Can. 1885); *Holmes v. Moore*, 17 L. C. R. 143 (1867).

¹⁶ *Doorman v. Jenkins*, 2 A. & E. 256, 4 Nev. & M. 170, 4 L. J. K. B. 29 (Eng. 1834); *Coykendall v. Eaton*, 55 Barb. (N. Y.) 188, 37 How. Pr. 438 (1869); *George v. Depierris*, 17 N. Y. Misc. 400, 39 N. Y. Supp. 1080 (1896).

¹⁷ *Doorman v. Jenkins*, 2 A. & E. 256, 4 N. & M. 170, 4 L. J. K. B. 29 (Eng. 1834).

§ 206. Responsibility for misdelivery.

A misdelivery of goods bailed is ordinarily held to make even a gratuitous bailee liable. This is obviously true if the misdelivery was negligent. So of a delivery to an apparent stranger who claims it without an effort to verify his claim.¹⁸ And so where the goods were wrongly delivered to an expressman who brought a slip of paper with the owner's name on it, the innkeeper was held liable.¹⁹ The facts of the case were as follows. The plaintiff had been a boarder at the defendant's inn, as a servant to other boarders, but she had departed from the inn, leaving her trunk behind. On November 18, 1895, the plaintiff left the order with Jackson's express to call for her trunk. Manning, one of the drivers employed by that concern, called at the hotel for the trunk the next morning and demanded the trunk, but was told that it had been delivered to another expressman on the previous day. The defendant proved that a man with a wagon called on November 18, 1895; that he had a slip of paper with the plaintiff's name thereon, and that upon demanding the trunk he was allowed to take it. The defendant took no receipt for the trunk. Randolph, the hall man, who delivered it, testified that he had worked in hotels for six or seven years, and that in general they took receipts, but that "he did not think to take a receipt for help's trunks." He did not obtain the name of the man to whom he delivered it, or ascertain the license number of his wagon, or require him to leave the slip of paper containing the plaintiff's name; so that the defendant was unable to give any information concerning where the trunk had gone or where it could be found, further than it was given to an unknown expressman. The plaintiff testified that the delivery made was without her authority; and that, although she had consulted detectives and made efforts to recover her property, she had not been able to obtain it.

Under these circumstances the court held the defendant

¹⁸ *Wear v. Gleason*, 52 Ark. 364, 12 S. W. 756, 20 Am. St. Rep. 186 (1889).

¹⁹ *George v. Depierris*, 17 N. Y. Misc. 400, 39 N. Y. Supp. 1082 (1896).

liable. The delivery of the trunk was not the exercise of that care which the law imposed upon the plaintiff; and the facts showed an indifference respecting the safety of the plaintiff's property and disregard of the usage as to taking receipts which excludes the idea that any diligence was used by the defendant to insure its delivery to her.

The innkeeper is equally liable for a misdelivery the circumstances of which are unexplained. The burden is upon him to explain the loss.²⁰ And there is good authority and reason for the view that even a gratuitous bailee is liable in case of a misdelivery, however careful he may have been to secure a good delivery; for it is departing from the terms of his bailment.²¹

TOPIC III.

RESPONSIBILITY FOR GOODS OF GUEST OUTSIDE THE INN.

§ 207. Goods in bath house attached to inn.

Where the goods of a guest are left in charge of the innkeeper outside the precincts of the inn, though the innkeeper is not as such liable for the goods, he is nevertheless responsible for the exercise of due care. So where an innkeeper provided bath rooms, outside the inn, for his guests, and the guest's goods were lost from the bath room, while the innkeeper is not liable on a declaration charging him as innkeeper²² he is liable for loss by his negligence or misdelivery.²³

²⁰ *Murray v. Clarke*, 2 Daly (N. Y.), 102 (1866).

²¹ *Jenkins v. Bacon*, 111 Mass. 373 (1873).

²² *Minor v. Staples*, 71 Me. 316, 36 Am. Rep. 318 (1880).

²³ *Tombler v. Koelling*, 60 Ark. 62, 28 S. W. 795 (1894). The defendant was the keeper of the bath house, not an innkeeper, but the same principle is involved.

CHAPTER XVII.

LIMITATION AND MODIFICATION OF RESPONSIBILITY.

§ 211. Limitation of liability by contract.	§ 213. Rule requiring deposit of the goods.
212. Reasonable rules for the conduct of the guest.	214. How far deposit can be required.
	215. Sufficiency of the notice.

§ 211. Limitation of liability by contract.

Like other persons engaged in a public employment, for instance, the common carrier, the innkeeper may not limit his liability for loss of the guest's goods, as it is imposed by the common law, by a contract with the guest.¹ The same necessity of the guest who applies to be received which leads to the obligation to receive him, puts him at the mercy of the innkeeper who requires a consent to the limitation of liability as a condition of his being received. The parties are not on an equal footing, and public policy requires that the guest be protected. The contract therefore for limitation of the innkeeper's liability is void as against public policy.

For the same reason, the innkeeper cannot require the guest to take charge of his own goods, for that would in effect be a refusal to take them into the inn.²

§ 212. Reasonable rules for the conduct of the guest.

Like the common carriers and others engaged in a public occupation, the innkeeper may make reasonable rules for the

¹ *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855); *Fuller v. Coats*, 18 Ohio St. 343 (1868).

² *Calve's Case*, 8 Coke, 63 (1584).

conduct of his business. These rules cannot affect the nature or extent of his obligation, as for instance, his liability for loss of goods, or they would be open to the same objection as contracts limiting liability. They may, however, so far as is reasonable, affect the conduct of himself and his guests.³ "The protection of the innkeeper by reasonable rules respecting the custody of the goods of the guest while he remains at the inn, is not disfavored in the law, and it is eminently just that he upon whom the responsibility for the safety of the goods doth rest, shall have power to use such guards for that safe keeping as are consistent with the due comfort and convenience of the guest. The clothing of the guest, and articles necessary for his daily use and comfort while remaining, could not, of course, under this view of the subject, be removed from him, so as to interfere with or interrupt that use and convenience. But goods, merchandise and money, in trunks or packages, are, in my opinion, subject to the landlord's reasonable requirement in this respect."⁴

§ 213. Rule requiring deposit of the goods.

The commonest form of regulation is a rule that valuable packages must be left at the office to be placed in the safe. So far as this may be reasonably required of a guest, failure to do so will exonerate the innkeeper from loss.⁵ This is no more than just to the innkeeper; for since the innkeeper can have no effective control over articles taken by the guest into his room, he ought where the risk is great to be allowed to exercise a more direct and efficient control. As Mr. Chief Justice Day said in the case of *Fuller v. Coats*, cited in the last note, "To enable the innkeeper to discharge his duty, and to secure the property of the traveller from loss, while in a house ever open to the public, it may, in many instances, become absolutely necessary for him to provide special means, and to make

³ *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855).

⁴ *Woodruff, J.*, in *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855).

⁵ *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855); *Fuller v. Coats*, 18 Ohio St. 343 (1868).

necessary regulations and requirements to be observed by the guest, to secure the safety of his property. When such means and requirements are reasonable and proper for that purpose, and they are brought to the knowledge of the guest, with the information that, if not observed by him, the innkeeper will not be responsible, ordinary prudence, the interest of both parties, and public policy, would require of the guest a compliance therewith; and if he should fail to do so, and his goods are lost, solely for that reason, he would justly and properly be chargeable with negligence. To hold otherwise, would subject the party without fault to the payment of damages to a party for loss occasioned by his own negligence, and would be carrying the liability of innkeepers to an unreasonable extent."

As will be seen in the next chapter, the defence of the innkeeper does not so properly rest upon the neglect of due care by the guest as upon neglect of a more specific duty, that is, the duty of acting in accordance with the innkeeper's directions. The notice of the innkeeper's reasonable rule for the conduct of the guest in this respect puts upon the guest the duty of abiding by the rule; and if the guest neglects the duty of abiding by the innkeeper's reasonable regulation the innkeeper is for that reason exempted from responsibility for the resulting loss.

A similar requirement is often made by statute. Such statutes will be collected and discussed in a subsequent chapter.

An innkeeper is liable for the loss of everything deposited under this notice.⁶

§ 214. How far deposit can be required.

The notice is effective only as to property which can conveniently be left in the safe, not as to property which the guest needs to keep by him; clothing and articles of daily use are not covered by it.⁷ For it is obvious that the guest must have

⁶ *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867).

⁷ *Johnson v. Richardson*, 17 Ill. 302, 63 Am. Dec. 369 (1855); *Milford v.*

these things by him in his room. He cannot go to the innkeeper's office every time he needs an article of clothing to wear or a little money to spend, nor can he withdraw his watch from the safe whenever he desires to know the time. It is, therefore, not reasonable to require him to surrender these things to the innkeeper.

It may of course be argued that he might be forced to exercise the option of surrendering them to the innkeeper or of taking himself the risk of losing them, as he would do if he carried them with him into the street outside the inn. But it is to be observed that if the innkeeper by means of his notice can force this alternative upon the guest, since the first course is impracticable, he is really forcing the guest to take the risk of loss, or in other words is limiting his own liability by notice, a thing which he is forbidden by law to do. A different problem is presented when a statute requires the guest to surrender goods to the landlord on notice, or else to take the risk of loss. The risk of loss may of course be placed upon the guest by statute, though it cannot be placed upon him by notice or contract of the innkeeper; and it is therefore a mere matter of interpreting the statute in order to discover whether the language of it covers the case. The question so far as it involves the construction of a statute will be discussed in a later chapter.

§ 215. Sufficiency of the notice.

The notice must be given reasonably. Notice given a year previously to the person becoming a guest is not reasonable.⁸

Notice posted on the door of the guest's chamber was held not to be brought home to the guest unless it was found as a matter of fact that he either saw it or was negligent for not doing so.⁹

Wesley, 1 Wilson (Ind.), 119 (1872); *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855).

⁸ *Lanier v. Youngblood*, 73 Ala. 587 (1883).

⁹ *Bodwell v. Bragg*, 29 Ia. 232 (1870).

The notice must be construed strictly. Thus a notice that "valuables" must be put in the safe has been held not to extend to mineral specimens¹⁰ or to money;¹¹ and a notice that the guest had better dispose of goods in a certain way is not notice that he must do so in order to hold the landlord responsible.¹²

¹⁰ *Brown Hotel Co. v. Burckhardt*, 13 Col. App. 59, 56 Pac. 188 (1899).

¹¹ *Stanton v. Leland*, 4 E. D. Smith (N. Y.), 88 (1855).

¹² *Packard v. Northcraft*, 2 Metc. (Ky.) 439 (1859).

CHAPTER XVIII.

LOSS CHARGEABLE TO THE GUEST; CONTRIBUTORY NEGLIGENCE.

§ 221. Goods taken by servant or companion of guest.	§ 225. Failure to deliver valuables to innkeeper.
222. Goods injured because of owner's act.	226. Failure to inform innkeeper of value of goods deposited.
223. Goods lost by reason of contributory negligence of guest.	227. Publicly exhibiting money or valuables.
224. What is contributory negligence: failure to lock door or window.	228. Other acts of negligence.

§ 221. Goods taken by servant or companion of guest.

If the loss of the goods is chargeable in any way to the guest himself, the innkeeper is absolved. Thus the innkeeper is not responsible if the goods are taken by the guest's servant,¹ or by one who accompanied the guest to the inn and shared his room by his will.² Of course, if the innkeeper himself put the thief into the guest's room, the innkeeper is liable, even though the guest consent.

In *Horslow's Case*,³ counsel for the defendant said in argument: "Suppose I with my good will suffer a stranger to lodge with me in the inn, and in my chamber, which stranger robs me, and I do not know him, shall not the innkeeper be charged with it?" To which Newton, C. J., answered: "No, sir; when he was lodged in your chamber not by the innkeeper, but by

¹ *Calye's Case*, 8 Coke, 32 (1584).

² *Calye's Case*, 8 Coke, 32 (1584); *Horslow's Case*, Y. B. 22 Hen. 6, 21, pl. 38 (1444).

³ Y. B. 22 Hen. 6, 21, pl. 38 (1444).

your own sufferance; but if he was lodged with you by the innkeeper, then the innkeeper shall be charged. And suppose that your own servant who is with you in the inn robs you shall the innkeeper be charged? Certainly not."

On this principle, if a guest allows another to appear to be the owner of the goods and to exercise acts of ownership over them, and the latter carries the goods away, the innkeeper is excused.⁴

§ 222. Goods injured because of owner's act.

So where the guest gives explicit directions as to the care of the goods, and the loss happens through following such directions, the innkeeper is not liable. So in *Owens v. Geiger*⁵ the facts, as stated by the court, were that the defendant was an innkeeper, and the plaintiff "delivered his horse to him to be kept till his return, as he was going to foreign parts; that Owens agreed with Geiger as to the feeding and keeping of the horse till his return, for which Owens was to pay a reasonable reward;" and "that Owens told Geiger that he wished his horse to run in his yard in the daytime, his legs being swelled." Owens's horse was put into the yard, jumped out and escaped, and was lost. The court held an instruction to the jury that "if they believed that Owens's horse was put into the defendant's yard by Owens's direction, and that the horse escaped therefrom without negligence on the part of Geiger, then they must find for the defendant," was correct. And so where the guest gives the goods, not to the innkeeper or to his servant as such, but to another guest or other inmate in whom he reposes confidence, and the goods are embezzled, the innkeeper is not liable.⁶

⁴ *Kelsey v. Berry*, 42 Ill. 469 (1867). But the fact that the owner had several times taken the thief into his room, and had authorized him to sell goods from the samples there (but not to remove them) did not justify the innkeeper in admitting the thief to the room, or excuse him for loss of the goods. *Jacobi v. Haynes*, 14 N. Y. Misc. 15, 35 N. Y. Supp. 120 (1895).

⁵ 2 Mo. 39, 22 Am. Dec. 435 (1828).

⁶ *Houser v. Tully*, 62 Pa. 92, 1 Am. Rep. 390 (1869).

§ 223. Goods lost by reason of contributory negligence of guest.

The loss of goods is most commonly chargeable to the guest himself by reason of contributory negligence on the part of the guest. A guest cannot recover for the loss of his goods from an inn if his own negligence contributed to the loss.⁷

In order to protect the innkeeper from liability the negligence of the guest need not be gross.⁸ It is enough if it is the want of such ordinary care as a reasonable prudent man would exercise under the existing circumstances.⁹ And the care required of the guest must not be such care as will cause him serious personal inconvenience; the innkeeper cannot call upon the guest seriously to inconvenience himself in such a matter.¹⁰ *A fortiori* the guest cannot be called upon to run into danger.¹¹

Whether the negligence of the guest did contribute to the loss is a question of fact;¹² and the burden of proof of this fact is on the innkeeper.¹³ If the innkeeper might subsequently

⁷ Burgess v. Clements, 4 M. & S. 306, Holt, 211 n., 1 Stark. 251 n. (Eng. 1815); Armistead v. Wilde, 17 Q. B. 261, 20 L. J. Q. B. 524, 15 Jur. 1010 (Eng. 1851); Cashill v. Wright, 6 E. & B. 891, 2 Jur. N. S. 1072, 4 W. R. 709 (Eng. 1856); Elcox v. Hill, 98 U. S. 218, 25 L. ed. 103 (1878); Chamberlain v. Masterton, 26 Ala. 371 (1855); Sasseeen v. Clark, 37 Ga. 242 (1867); Watson v. Loughran, 112 Ga. 837, 38 S. E. 82 (1901); Hulbert v. Hartman, 79 Ill. App. 289 (1898); Spring v. Hager, 145 Mass. 186, 13 N. E. 479 (1887); Rubenstein v. Cruikshanks, 54 Mich. 199, 19 N. W. 954, 52 Am. Rep. 806 (1884); Hadley v. Upshaw, 27 Tex. 547, 86 Am. Dec. 654 (1864).

⁸ Cashill v. Wright, 6 E. & B. 891, 2 Jur. N. S. 1072, 4 W. R. 709 (Eng. 1856); Lanier v. Youngblood, 73 Ala. 587 (1883); Fowler v. Dorlon, 24 Barb. (N. Y.) 384 (1856).

⁹ Lanier v. Youngblood, 73 Ala. 587 (1883); Hadley v. Upshaw, 27 Tex. 547, 86 Am. Dec. 654 (1864).

¹⁰ Maltby v. Chapman, 25 Md. 310 (1866).

¹¹ Jefferson Hotel Co. v. Warren, 128 Fed. 565 (1904).

¹² Armistead v. Wilde, 17 Q. B. 261, 20 L. J. Q. B. 524, 15 Jur. 1010 (Eng. 1851); Jefferson Hotel Co. v. Warren, 128 Fed. 565 (1904); Lanier v. Youngblood, 73 Ala. 587 (1883); Hadley v. Upshaw, 27 Tex. 547, 86 Am. Dec. 654 (1864); Read v. Amidon, 41 Vt. 15, 98 Am. Dec. 560 (1868). Of course the facts may be so clear that the court will decide the question without leaving it to the jury. Lanier v. Youngblood, 73 Ala. 587 (1883).

¹³ Jefferson Hotel Co. v. Warren, 128 Fed. 565 (1904).

have avoided the effect of the guest's negligence but failed to do so, he cannot escape liability.¹⁴

In the case of *Medawar v. Grand Hotel Company*, cited in the last note, the plaintiff sued the defendant innkeeper for the loss of certain jewelry. The plaintiff came to the inn and found it full, with the exception of one room which had been engaged in advance by another person. The plaintiff, however, was allowed to dress in the room, and keep it until the arrival of the person who had engaged it. He went to the room, opened his bag, and took out a stand which contained various implements for the toilet, and also in a drawer the trinkets for the loss of which he sued. After he finished dressing he went out, leaving the stand on the dressing table and the door of the room unlocked, and left the inn to attend the races. While he was absent the person who had engaged the room arrived, and in order to clear the room for his occupancy the stand with the plaintiff's other luggage was placed in the corridor, where it remained until the plaintiff's return, that night. While the luggage was in the corridor the jewelry was stolen. The High Court held that the innkeeper was not liable, but the Court of Appeal reversed the decision. On the point here under discussion Lord Esher, Master of the Rolls, remarked: "There was contributory negligence on the part of the plaintiff while the goods were in the room; but when the defendant's servants went into the room and became aware of the plaintiff's negligence they were bound to take reasonable care of the property. When they saw the negligence of the plaintiff they ought to have taken care not to be negligent themselves. If the jewelry was stolen while it was in the corridor, it was stolen not in consequence of the plaintiff's negligence, but by reason of the defendant's negligence."

The negligence must of course have to do with the loss of

¹⁴ *Watson v. Loughran*, 112 Ga. 837, 38 S. E. 82 (discovered that guest left door unlocked and yet did not lock it). *Medawar v. Grand Hotel Co.* (1891), 2 Q. B. 11, 60 L. J. Q. B. 209, 64 L. T. 851, 55 J. P. 614 (discovered door unlocked, and removed goods to public corridor).

the goods themselves; and evidence of careless conduct by the guest either before or after the time he was at the inn will not be received.¹⁵

It is obvious that the question is the same, whether the owner of the goods is guest, boarder or lodger; since contributory negligence will bar them all. The cases of all will therefore be considered together.

§ 224. What is contributory negligence: failure to lock door or window.

In accordance with the general doctrine, it is a question of fact in each case whether a failure upon the part of the guest to lock his door at night constitutes such negligence as to prevent him from recovering from the innkeeper the value of the goods stolen from his room; and it is a question for the jury unless the facts are so plain that the court will not leave it to the jury.

In one case a lodger in a city lodging house left his own door unlocked, while he knew that the outer door was left unlocked, and anyone might enter the house and the rooms unnoticed. He was held to be barred by his own negligence from recovering for goods lost from his room.¹⁶ This case is stronger than the ordinary case for two reasons. First, it being a case of a lodging house, the lodger could recover only on the ground of the housekeeper's negligence, which in this case was alleged to be the very act of leaving the outer door unlocked which he knew and might have guarded against. Second, in the case of an ordinary inn where the outer door is unlocked the innkeeper or his servant is on the watch to keep out thieves.

In a few cases the court has held, upon the whole evidence (usually after a verdict for the plaintiff) that failure to lock a door was not negligence.¹⁷ And in one case where the inn-

¹⁵ *Burrows v. Trieber*, 21 Md. 320, 83 Am. Dec. 590 (1864).

¹⁶ *Swann v. Smith*, 14 Daly (N. Y.), 114 (1887).

¹⁷ *Mitchell v. Woods*, 16 L. T. 676 (Eng. 1867); *Buddenburg v. Benner*, 1 Hilt. (N.Y.) 84 (1856) (boarding house); *Cunningham v. Bucky*, 42 W. Va. 671, 26 S. E. 442, 35 L. R. A. 850 (1896).

keeper directed the guest not to lock the door, as other persons were to go into the same room, the court without leaving the question to the jury decided that the guest who left the door unlocked was not thereby barred from recovery.¹⁸

In a case in Illinois (where the innkeeper is not responsible without negligence) it was held that a guest cannot recover where the evidence shows that he probably left the door unlocked, and that he failed to deposit his valuables in the office in accordance with the requirements of a notice which he saw.¹⁹

In most cases, however, it has been held that the failure to lock the door is sufficient evidence of contributory negligence to go to the jury; and that the jury is to determine the fact upon that and all the other evidence,²⁰ and a dismissal of the suit by the judge on the ground of contributory negligence, without leaving the question to the jury, is erroneous.²¹

All the circumstances are to be considered by the jury in determining this fact; as, for instance, that the inn was a London inn, where bad characters might be expected to seek entry,²² or that the valuable goods or money had been publicly displayed.²³

"The fact of the guest having the means of securing himself, and choosing not to use them, is one which with the other cir-

¹⁸ *Milford v. Wesley*, 1 *Wilson* (Ind.), 119 (1872).

¹⁹ *Hulbert v. Hartman*, 79 *Ill. App.* 289 (1898).

²⁰ *Oppenheim v. White Lion Hotel Co.*, L. R. 6 C. P. 515, 40 L. J. C. P. 231, 25 L. T. 93 (Eng. 1871); *Filipowski v. Merryweather*, 2 F. & F. 285 (Eng. 1860); *Herbert v. Markwell*, W. N. (Eng. 1882) 112, affirming S. C., 45 L. T. 649, 46 J. P. 358; *Spice v. Bacon*, 36 L. T. 896 (Eng. 1877); *Bohler v. Owens*, 60 Ga. 185 (1878); *Murchison v. Sargent*, 69 Ga. 206, 47 Am. Rep. 754 (1882); *Batterson v. Vogel*, 10 Mo. App. 235 (1881); *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882); *Ramaley v. Leland*, 6 Robt. (N. Y.) 358 (1868); *Becker v. Warner*, 90 Hun (N. Y.), 187, 35 N. Y. Supp. 739 (1895); *Shultz v. Wall*, 134 Pa. 262, 19 Atl. 742 (1890).

²¹ *Classen v. Leopold*, 2 *Sweeney* (N. Y.), 705 (1870).

²² *Filipowski v. Merryweather*, 2 F. & F. 285 (1860), per Erle, C. J.

²³ *Oppenheim v. White Lion Hotel Co.*, L. R. 6 C. P. 515, 40 L. J. C. P. 231, 25 L. T. 93 (Eng. 1871); *Herbert v. Markwell*, W. N. (Eng. 1882) 112, affirming S. C., 45 L. T. 649, 46 J. P. 358; *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882).

cumstances of the case should be left to the jury. The weight of it must, of course, depend upon the state of society at the time and place. What would be prudent in a small hotel, in a small town, might be the extreme of imprudence at a large hotel in a city like Bristol, where probably three hundred bedrooms are occupied by people of all sorts.”²⁴

The fact of the guest having the means of securing himself and not choosing to use them, is one which, with the other circumstances of the case, should be left to the jury. It should not be singled out and put to the jury as a test of negligence. The question is, whether the loss would or would not have happened if the plaintiff had used the ordinary care that a prudent man might reasonably be expected to have taken under the circumstances. The jury are not to be told that, if by reasonable care the plaintiff might have locked his door and did not do so, this is such negligence as to exonerate the innkeeper, if the loss occurred through leaving the door unlocked.²⁵

Failure of the guest, after locking the door, to bolt it also, when he did not see the bolt nor have it called to his attention, is so clearly not contributory negligence that the court will not allow the jury to pass on the question, but will direct the jury that such failure will not defeat the action.²⁶ The court in this case said:

“It must often depend much upon the circumstances of the case, the customs of the age and country, and the usages of the place, whether the plaintiff has been guilty of such negligence that the loss can be said to be attributable to it; and we cannot say, as matter of law, that on the facts appearing in this case, if the plaintiff saw the bolt, and did not use it, this was not some evidence of negligence to be submitted to the jury. The delivery of a key to a guest may be held to be an intimation to him that he is to use it in locking his door. The

²⁴ M. Smith, J., in *Oppenheim v. White Lion Hotel Co.*, L. R. 6 C. P. 515 40 L. J. C. P. 231, 25 L. T. 93 (Eng. 1871).

²⁵ *Batterson v. Vogel*, 10 Mo. App. 235.

²⁶ *Spring v. Hager*, 145 Mass. 186, 13 N. E. 479 (1887).

lock, however, is the only fastening which the guest can use when not in the room. A bolt, if seen, may itself suggest that it ought to be used. If, however, there are no regulations brought to the notice of a guest requesting him to bolt the door, and if it is not known to the guest that there is a bolt, and his attention is not in any way called to it, we think the fact that, after locking his door with the key, he does not search for a bolt and find it, is not evidence of negligence on his part." A new trial was granted, after a verdict for the defendant, by reason of the failure of the judge to direct the jury as the plaintiff requested.

On the other hand, where the guest saw the bolts, failure to use them was relied on as one element of negligence to bar his recovery.²⁷ Failure to notify the innkeeper that the lock is out of repair is not negligence on the part of the guest.²⁸

§ 225. Failure to deliver valuables to innkeeper.

In the absence of special circumstances, it is not negligence for the guest to retain valuables in his own possession instead of depositing them with the innkeeper.²⁹ So the innkeeper is responsible for the loss of money locked in a trunk in the guest's room,³⁰ or worn upon his person in a money belt while he is asleep.³¹

So it is not negligence to leave the goods in a public room in the inn, if it is with the assent of the innkeeper or his servants, even though the innkeeper informed the guest that the goods would be safer elsewhere. Thus where the goods were left in the lobby of the inn and were lost, the innkeeper was liable, though the innkeeper's servant had informed the guest that the "commercial room" was the usual and proper place

²⁷ *Hulbert v. Hartman*, 79 Ill. App. 289 (1898).

²⁸ *Lanier v. Youngblood*, 73 Ala. 587 (1883).

²⁹ *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. Rep. 754 (1882); *McClay v. Nash*, 6 Ky. Law Rep. 298 (1884); *Smith v. Wilson*, 36 Minn. 334, 31 N. W. 176 (1887); *Jalie v. Cardinal*, 35 Wis. 118 (1874).

³⁰ *Berkshire Woolen Co. v. Proctor*, 7 Cush. (Mass.) 417 (1851); *Van Wyck v. Howard*, 15 How. Pr. (N. Y.) 147 (1856).

³¹ *Smith v. Wilson*, 36 Minn. 334, 31 N. W. 176 (1887).

for such goods, and had offered to put them there, but had left them in the lobby at the guest's request.³²

So, where an innkeeper, as his guest was about to go to bed, remarked to him that he had better take his valise to his room, to which he replied it was not necessary, that his valise would be safe in the barroom, where it was allowed to remain; and on the next morning it was gone and could not be found, it was held that the keeper was liable for its loss.³³

Where, however, the guest's act is not expressly permitted by the innkeeper, though known to him, the question of liability is for the jury. Thus where the guest laid down a valuable pair of gloves on a bench in a public room in the presence of the innkeeper, and they were lost, the question of contributory negligence must be determined by the jury.³⁴

The fact that a custom exists to deposit valuables with the innkeeper does not render it negligence in the guest not to do so, if the custom was unknown to him; though if he knew of it, it might be negligent in him to fail to comply with it.³⁵

Where, however, the guest has express notice that he takes the risk of loss if he does not deposit his valuables with the innkeeper, he is negligent if he fails to comply with the notice.³⁶ Thus where a guest saw a notice to the effect that "the proprietor will be happy to take charge of any valuables," it was held negligent for the guest to leave money in a bag in his room, and he was not allowed to recover for the loss of it.³⁷ Pigott, B., said: "The invitation embodied in the notice was equivalent to a warning of risk. After that warning it was negligent in the plaintiff to leave his property as he did;" and Bramwell, B., characterized the plaintiff's conduct as "most careless." So where the guest asked if the goods would be safe in his room, and he was told he must leave them at the

³² Candy v. Spencer, 3 F. & F. 306 (1862).

³³ Packard v. Northcraft, 2 Met. (Ky.) 439 (1859).

³⁴ Read v. Amidon, 41 Vt. 15, 98 Am. Dec. 560 (1868).

³⁵ Berkshire Woolen Co. v. Proctor, 7 Cush. (Mass.) 417 (1851).

³⁶ Jalie v. Cardinal, 35 Wis. 118 (1874) (*semble*).

³⁷ Jones v. Jackson, 29 L. T. 399 (Eng. 1873).

bar, but notwithstanding this warning he kept them in his room and they were lost, he was barred from recovery by his negligence.³⁸

The notice, in order to affect the guest with the risk of loss, must be clear; and other courts might perhaps have decided differently on the facts of the English case just stated. A notice that packages of value may be deposited in the office safe, and cautioning guests against leaving money or valuables in a guest's room, was held in a New York case insufficient to put the risk of loss of goods left in the room upon a guest. "This may very well have been understood, as Forbes appears to have understood it, as merely cautioning him against leaving money or valuables loose or exposed about his room. If the landlord, to enable him the more effectually to secure the property, requires something to be done by the guest, it must appear that what was required was in itself reasonable, and that the guest was distinctly informed of what was necessary to be done on his part. Whether the request was made orally or in the form of a printed notice, it should be in terms so clear and unmistakable as to leave room for no reasonable doubt as to what was intended. The traveller should know precisely what he is to do before he can be chargeable with negligence for not doing it; and as the notice did not apprise him that he was not to leave money locked up in his trunk, he cannot be regarded as guilty of negligence in so leaving it." ³⁹

§ 226. Failure to inform innkeeper of value of goods deposited.

It is not negligence to fail to inform the innkeeper that a package put into his possession or that of his servants contains valuables.⁴⁰

³⁸ *Wilson v. Halpin*, 30 How. Pr. (N. Y.) 124, 1 Daly, 496 (1865).

³⁹ *Van Wyck v. Howard*, 12 How. Pr. (N. Y.) 147 (1856).

⁴⁰ *Coskery v. Nagle*, 83 Ga. 696, 10 S. E. 491, 20 Am. St. Rep. 333, 6 L. R. A. 483 (1889); *Johnson v. Richardson*, 17 Ill. 302, 63 Am. Dec. 369 (1855); *Bowell v. DeWald*, 2 Ind. App. 303, 28 N. E. 430 (1891); *Shoecraft v. Bailey*, 25 Ia. 553 (1868); *Rubenstein v. Cruikshanks*, 54 Mich. 199, 19 N. W. 954, 52 Am. Rep. 806 (1884); *Fowler v. Dorlon*, 24 Barb. (N. Y.) 384 (1856).

§ 227. Publicly exhibiting money or valuables.

Opening or counting one's money or exhibiting valuable goods in a public place is not of itself such negligence as will bar recovery by the guest,⁴¹ but it is one of the circumstances to be considered by the jury which may find the act negligent.⁴² In *Armistead v. Wilde* the plaintiff was a guest at an inn, and had lost from a box which he brought to the inn a parcel containing several hundred pounds in bank notes. Upon the facts being examined, the evidence showed that the plaintiff had boasted of the sum which he possessed, and had ostentatiously rolled up the notes and put them in the box in the travellers' room in the presence of several persons, and had then left the box in the travellers' room, imperfectly secured. One of the persons to whom the plaintiff had shown the notes was probably the thief. The judge directed the jury to find a verdict for the defendant if they thought the plaintiff "had been guilty of gross negligence in leaving the money in the travellers' room;" and the jury accordingly found a verdict of not guilty. The plaintiff had the temerity to move for a new trial on the ground of misdirection, but the rule was discharged. Lord Chief Justice Campbell said: "Suppose a guest were to count out his money and leave it lying loose on the table of the public room; surely that might be such gross negligence as to be the cause of the loss. The facts here do not go so far as that; but there was evidence that the plaintiff's servant in a public room took out a large sum of money, counted it and showed it, and then left it there in a box capable of being opened without using a key. These facts might or might not amount to negligence; but they were evidence of it; and it was a fair question for the jury."

The court also noticed that the judge in his charge had

⁴¹ *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882); *Cunningham v. Bucky*, 42 W. Va. 671, 26 S. E. 442, 35 L. R. A. 850 (1896).

⁴² *Armistead v. Wilde*, 17 Q. B. 261, 20 L. J. Q. B. 524, 15 Jur. 1010 (1851); *Cashill v. Wright*, 6 E. & B. 891, 2 Jur. N. S. 1072, 4 W. R. 709 (1856).

spoken of "gross" negligence, and intimated that this was more favorable to the plaintiff than he had a right to ask.

§ 228. Other acts of negligence.

Intoxication of the guest is not in itself contributory negligence,⁴³ but if it contributes in any way to the loss it bars the recovery.⁴⁴

Failure to inquire after the safety of the goods for several days after the innkeeper received them is not negligence;⁴⁵ nor failure to occupy the room at night;⁴⁶ nor failure to request a search of a place in which the goods might be.⁴⁷

⁴³ *Cunningham v. Bucky*, 42 W. Va. 671, 26 S. E. 442, 35 L. R. A. 442 (1896).

⁴⁴ *Walsh v. Porterfield*, 87 Pa. 376 (1878).

⁴⁵ *Eden v. Drey*, 75 Ill. App. 102 (1898).

⁴⁶ *Turner v. Whitaker*, 9 Pa. Super. Ct. 83, 43 Wkly. Notes Cas. 375 (1898).

⁴⁷ *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882).

SUBTITLE IV.

THE END OF RESPONSIBILITY.

CHAPTER XIX.

TERMINATION OF RELATION OF HOST AND GUEST.

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| § 231. Guest leaves the inn finally.
232. Responsibility during temporary absence of guest.
233. What is a merely temporary absence. | § 234. Responsibility during reasonable time for removal.
235. Goods received after termination of relation. |
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§ 231. Guest leaves the inn finally.

If the guest pays his bill and leaves the inn without any intention of returning, but leaves goods, with consent of the innkeeper, to be kept until called for, the relation of host and guest is at an end, and the innkeeper is liable as gratuitous bailee only.¹ In *Hays v. Turner*, just cited in support of this proposition, the facts proved were that the defendant was an innkeeper, and the plaintiff stopped at the inn as a guest, having a trunk full of baggage with him. After remaining at the inn for several days the plaintiff paid his bill, except twenty-five cents, and left for a neighboring town, leaving his trunk, and stating to the innkeeper that he would return to his inn in three or four days. The plaintiff was engaged at the time in looking for a location in which to set up his

¹ *Glenn v. Jackson*, 93 Ala. 342, 9 So. 259, 12 L. R. A. 382 (1890); *O'Brien v. Vaill*, 22 Fla. 627, 1 So. 137, 1 Am. St. Rep. 219 (1886); *Hays v. Turner*, 23 Ia. 214 (1867); *Hoffman v. Roessle*, 39 N. Y. Misc. 787, 81 N. Y. Supp. 291 (1902); *Wintermute v. Clarke*, 5 Sandf. (N. Y.) 242 (1851); *Whitemore v. Haroldson*, 2 Lea (Tenn.), 312 (1879); *McDaniels v. Robinson*, 28 Vt. 387, 67 Am. Dec. 720 (1856).

trade. During his absence the trunk was given up to a stranger. After a few days the plaintiff returned to the inn and found his trunk gone; and he brought this action, charging the defendant as innkeeper. The court held that the defendant could not be charged as an *innkeeper*, because the relation of innkeeper and guest was terminated when the plaintiff left the inn. The court said that the law would not be the same if the property left behind had been a horse; citing to that effect Bacon's Abridgement, where indeed it was said that the innkeeper would continue liable, since he benefited by the continuance of the horse with him. Nor, the court continued, "would the rule be the same if the guest leaves, intending to, and actually should, return the same day; or if it appeared, that though absent, he was liable all the while for his board." When the goods are left without the consent of the innkeeper he is not under the innkeeper's liability as to the goods;² and all the more clearly if a guest leaves the inn so as to put an end to the relation of host and guest without paying his bill, the innkeeper is not liable as such for goods left on the premises, but is liable as gratuitous bailee.³

§ 232. Responsibility during temporary absence of guest.

One who is a guest at an inn may leave the inn for a time, and still leave his property under the safeguard of the landlord's liability.⁴ So where the guest having registered goes out

² *Wintermute v. Clarke*, 5 Sandf. (N. Y.) 242 (1851); *Palin v. Reid*, 10 Ont. 63 (1885).

³ *Murray v. Marshall*, 9 Col. 482, 13 Pac. 589, 59 Am. Rep. 152 (1886); *Murray v. Clarke*, 2 Daly (N. Y.), 102 (1866); *Lawrence v. Howard*, 1 Utah, 142 (1874).

⁴ *Brown Hotel Co. v. Burekhardt*, 13 Col. App. 59, 56 Pac. 188 (1899); *Hayes v. Turner*, 23 Ia. 214 (1867); *Grinnell v. Cook*, 3 Hill (N. Y.), 490 (1842); *McDonald v. Edgerton*, 5 Barb. (N. Y.) 560 (1849); *Whitemore v. Haroldson*, 2 Lea (Tenn.), 312 (1879); *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854); *Allen v. Smith*, 12 C. B. N. S. 638, 31 L. J. C. P. 306, 9 Jur. N. S. 230, 6 L. T. 459, 10 W. R. 646, affirmed, 9 Jur. N. S. 1284, 11 W. R. 440 (Eng. 1862); *Day v. Bather*, 2 H. & C. (Eng.) 14 (1863); *McElwaine v. Balmoral Hotel Co.*, Montreal L. R. 7 S. C. 139 (1891).

to view the town intending to return before night, the relation continues.⁵

While lapse of time is not conclusive on this point, yet if the guest's absence is to continue for a considerable time there is the less reason for regarding him as a guest in the interim. Indeed, in an old case, the court said that "one left goods in an inn and went about his business and returned on the same day, the innkeeper is answerable for the robbery of goods in the meantime; otherwise if he had not returned within three or four days." ⁶ But this is not properly a proposition of law; the length of the guest's absence is important only as it is evidence bearing on the main question, namely, whether the relation of host and guest continues in the interim.

The absence is the more likely to be regarded as temporary if the guest leaves behind him a horse or other property for the care of which he pays compensation. Thus, in the case of *Day v. Bather*, cited above, the plaintiff, who had become a guest at the defendant's inn, left the inn, saying that he should not be back until the following Monday, and requested that his mare might be properly attended to. He did not in fact return for about a fortnight. Meanwhile the hostler drove the mare out for exercise, and the mare became frightened, ran away, and received an injury. The plaintiff sued for damages for the injury. It was objected that the plaintiff had ceased to be a guest. In answer to the objection Chief Baron Pollock asked, "When did the horse cease to be in the defendant's custody as an innkeeper?" and Baron Martin said, "We must infer that the relation of innkeeper and guest existed between the defendant and the plaintiff until something was done to indicate the contrary." Baron Bramwell was a little more careful in his form of statement. "It is said that, as a matter of law, the relation of innkeeper and guest ceased to exist at the time of the accident. I do not

⁵ *Hayes v. Turner*, 23 Ia. 214 (1867); *McDonald v. Edgerton*, 5 Barb. (N. Y.) 560 (1849); *Gelley v. Clerk*, Cro. Jac. (Eng.) 188 (1607).

⁶ *Sands' Case* cited in *Natbroke v. Griffith*, F. Moore, 876 (Eng. 1603).

assent to that. The judge might not have been wrong if he had found, as a matter of fact, that the appellant was not an innkeeper with reference to the respondent at that time, especially if this was the first time the respondent had been at the inn. But suppose that what occurred on this occasion had happened before, and that the respondent, after staying away for a longer time, had returned and paid for the horse, any objection that the relation of innkeeper and guest did not exist would be at an end."

The effect of these opinions is evidently that an absence of several weeks does not necessarily interrupt the relation of host and guest where the guest has left a horse at the inn on which charges are constantly accruing in favor of the landlord; but it is equally clear that if the guest had definitely left the inn the court would have considered the relation at an end, even if the horse had remained behind.

§ 233. What is a merely temporary absence.

In order to have the relation continue during the absence of the guest, certain conditions must be fulfilled:

1. There must be an *animus revertendi*.⁷ This intent must be known to the innkeeper. Thus, where a traveller took a room merely to dress in, dressed and left the inn, the innkeeper would not be liable as such for goods left in the room, in spite of the secret intention of the guest to return and remain all night.⁸

2. The intent must be to return within a definite and reasonable time.⁹ If, however, at the time he leaves the inn the guest intends to return within a certain reasonable time the relation of host and guest will continue although the return is accidentally delayed.¹⁰

⁷ Allen v. Smith, 12 C. B. N. S. 638, 31 L. J. C. P. 306, 9 Jur. N. S. 230, 6 L. T. 459, 10 W. R. 646, affirmed, 9 Jur. N. S. 1284, 11 W. R. 440 (Eng. 1862); McDaniels v. Robinson, 28 Vt. 387, 67 Am. Dec. 720 (1856).

⁸ Lynar v. Mossup, 36 Up. Can. Q. B. 230 (1875).

⁹ Whitmore v. Haroldson, 2 Lea (Tenn.), 312 (1879); Day v. Bather, 2 H. & C. (Eng.) 14 (1863).

¹⁰ Day v. Bather, 2 H. & C. (Eng.) 14 (1863).

3. The liability to compensate the innkeeper must continue during the absence.¹¹ And so where a guest pays his bill and has his name checked off the register he ceases to be a guest, though he intends soon to return.¹² Where, however, he pays his bill in order to cash a draft, and does not have his name checked off the register, but, on the contrary, it is understood that he intends to continue a guest during his absence, the relation continues.¹³

“The right to charge is the criterion of the innkeeper’s liability. When the liability of the guest to be charged as such ceases, his claim on the innkeeper as such expires, subject only to the right to hold him responsible for the baggage of the guest for such time as may be reasonable to effect a removal.”¹⁴

If, therefore, it can be determined that the guest continues liable for the innkeeper’s charges during the interim, he is thereby shown to continue as a guest, since the relation and the liability to pay are concurrent.¹⁵

§ 234. Responsibility during reasonable time for removal.

After a guest pays his bill and departs, leaving baggage with the innkeeper’s consent, the innkeeper continues liable as such during a reasonable time for the removal of the baggage.¹⁶ So, after the bill had been paid and while the guest’s horse was being harnessed in order that he might drive away, the innkeeper continued liable as such for the safety of the horse.¹⁷ So where a traveller was told he could have a room only until an expected guest who had engaged it should arrive, and on

¹¹ *Miller v. Peeples*, 60 Miss. 819, 45 Am. Rep. 423 (1883).

¹² *Hayes v. Turner*, 23 Ia. 214 (1867).

¹³ *Brown Hotel Co. v. Burckhardt*, 13 Col. App. 59, 56 Pac. 188 (1899).

¹⁴ *Miller v. Peeples*, 60 Miss. 819, 45 Am. Rep. 423 (1883).

¹⁵ *Hayes v. Turner*, 23 Ia. 214 (1867); *Miller v. Peeples*, 60 Miss. 819, 45 Am. Rep. 423 (1883).

¹⁶ *Murray v. Marshall*, 9 Col. 482, 13 Pac. 589, 59 Am. Rep. 152 (1886); *Clark v. Ball*, 62 Pac. 529 (Col. 1905); *Adams v. Clem*, 41 Ga. 65, 5 Am. Rep. 524 (1870); *Maxwell v. Gerard*, 84 Hun, 537, 32 N. Y. Supp. 849 (1895); *Baehr v. Downey*, 133 Mich. 163, 94 N. W. 750 (1903).

¹⁷ *Seymour v. Cook*, 53 Barb. 451, 35 How. Pr. 180 (N. Y. 1868).

these terms he took the room and put his goods in it, and when the expected guest arrived the innkeeper's servants put the goods in the corridor, where they were lost, it was held that the innkeeper's liability continued after the goods had been placed in the corridor.¹⁸

And where the innkeeper undertakes to deliver the baggage at a steamboat or at a railroad station, the innkeeper's liability continues until it is so delivered.¹⁹

§ 235. Goods received after termination of relation.

Where the goods are received by the innkeeper for the guest after the relation has terminated and the guest has left the inn, the innkeeper is not liable as such, but only as ordinary bailee;²⁰ even though the innkeeper may previously have agreed with the guest to receive and forward the goods.²¹

¹⁸ *Medawar v. Grand Hotel Co.* (1891), 2 Q. B. 11, 60 L. J. Q. B. 209, 64 L. T. 851, 55 J. P. 614.

¹⁹ *Sasseen v. Clark*, 37 Ga. 242 (1867); *Giles v. Fauntleroy*, 13 Md. 126 (1859); *Maxwell v. Gerard*, 84 Hun (N. Y.), 537, 32 N. Y. Supp. 849 (1895).

²⁰ *Wear v. Gleason*, 52 Ark. 364, 12 S. W. 756, 20 Am. St. Rep. 186 (1889); *Baehr v. Downey*, 133 Mich. 163, 94 N. W. 750, 10 Detroit Leg. N. 153 (1903).

²¹ *Baehr v. Downey*, 133 Mich. 163, 94 N. W. 750, 10 Detroit Leg. N. 153 (1903).

TITLE IV.

COMPENSATION AND LIEN OF THE INNKEEPER.

CHAPTER XX.

THE CHARGES OF THE INNKEEPER.

§ 241. The innkeeper's charges must be reasonable.	§ 246. Compensation ceases when relation ends.
242. The amount of the charges may be fixed by statute.	247. For what services innkeeper is entitled to compensation.
243. The innkeeper may fix rates.	248. Entire obligation must be performed.
244. Payment may be required in advance.	249. Which of several guests is liable to pay charges.
245. Compensation due as soon as relation is established.	

§ 241. The innkeeper's charges must be reasonable.

The innkeeper is not only obliged by law to receive all proper travellers for whom he has room, but he is obliged to entertain them for a reasonable compensation.¹ The requirement that the compensation should be reasonable is a necessary corollary of the requirement that the guest should be received, for if it were open to the innkeeper to charge what he pleased he might exclude such applicants as he did not care to entertain by the mere device of demanding from them an unreasonable payment. "They do not deal upon contracts as others do, they only make bills, in which they can't set unreasonable rates; if they do, they are indictable for extortion."²

The amount of the charge cannot easily be fixed by rule;

¹ Baldwin v. Webb, 121 Ga. 416, 49 S. E. 265 (1904); Roche v. Road Driver's Assoc., 96 N. Y. Supp. 205 (N. Y. 1905).

² Eyre, J., in Newton v. Trigg, 1 Shower, 268 (1691).

nor is it usual to find the amount charged by an innkeeper disputed in court. The charge made by the innkeeper would, it seems, be upheld if it were not extravagant; "a person residing in a hotel cannot live as cheaply as at his own house."³

To prove the reasonableness or otherwise of a charge for board, the price of board at a similar inn in the neighborhood at about the same time may be shown.⁴

§ 242. The amount of the charges may be fixed by statute.

In earlier times it was more common than it is to-day to fix by statute the compensation to which an innkeeper should be entitled; for instance, as early as the year 1349, in one of the sections of the Statute of Laborers,⁵ it was provided that the hostellers, that is innkeepers, or other sellers of victuals "shall be bound to sell the same victual for a reasonable price, having respect to the price that such victual be sold at in the places adjoining, so that the same sellers have moderate gains, and not excessive, reasonably to be required according to the distance of the place from whence the said victuals be carried."

And in the year 1623,⁶ it was provided that "the hostellers or innholders shall sell their horse-bread, and their hay, oats, beans, peas, provender, and also all kind of victual both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking anything for litter."

In most of the American colonies the regulation of the price of entertainment in general appears not to have been found necessary in earlier times. In the Massachusetts and Plymouth colonies, for instance,⁷ the price of ale and liquor was regulated, but not the price of food or other entertainment. Indeed, the Puritan colonists were rather more anxious to prevent than

³ Lord Abinger, C. B., to the jury in *Proctor v. Nicholson*, 7 C. & P. 67 (1835).

⁴ *Cross v. Wilkins*, 43 N. H. 332 (1861).

⁵ 23 Ed. 3 c. 6.

⁶ 21 Jac. 1, c. 21.

⁷ Mass. Colonial Laws, 81; Plym. Col. Rec., Laws, 195.

encourage miscellaneous travel, and they were interested to secure reasonable entertainment rather for themselves than for travellers who might be passing through. In some of the colonies, however, the price of entertainment in general was more carefully regulated.

The amount of an innkeeper's compensation is not now commonly fixed by statute, though in some places power is given to a local governmental body, as, for instance, the local justices, to fix rates,⁸ and where this has been done, the innkeeper can recover no more than the rates so fixed.⁹

It is sometimes required by statute that the rates of board should be conspicuously posted in the inn; but where this is required, failure to post the rates will not prevent the innkeeper from recovering compensation, if in fact the guests remain at the inn to be entertained.¹⁰

§ 243. The innkeeper may fix rates.

If no regulation of the innkeeper's charges is made by statute the innkeeper is entitled, himself, to frame a schedule of rates, provided such rates are reasonable; or without having framed a formal schedule he may in any individual case make a reasonable charge. This may be a customary rate, or in the absence of a schedule of rates or any custom, it might be such amount as the innkeeper pleases to charge, subject to the provision that it be not more than the entertainment is reasonably worth. When once the rate of compensation has been fixed it continues until a new arrangement is made.¹¹

§ 244. Payment may be required in advance.

The innkeeper has a right if he chooses to demand payment

⁸ *Commonwealth v. Shortridge*, 3 J. J. Marsh. (Ky.), 638 (1830).

⁹ *Banks v. Oden*, 1 A. K. Marsh. (Ky.), 546 (1819).

¹⁰ *Whalley v. Toddington*, 36 Leg. Int. 136, 13 Phila. 2 (Pa.), (1879).

¹¹ This applies, of course, as well to the rates of a boarding-house keeper as to the rates of an innkeeper, and so where a boarder was given notice to quit, but afterwards was allowed to remain without further agreement, no change was effected in the rate of compensation, but it continued as it was before the notice of quittance was given. *Shoemaker v. Beaver*, 42 Leg. Int. (Pa.) 511 (1885).

in advance of his charges before he receives the guest.¹² This is of course a more awkward rule to utilize than the payment in advance in the case of the carrier, and yet it is quite clear that this is within the rights of the innkeeper. Whether the traveller applies for a room or for board he could undoubtedly be required, as a condition of his reception, to pay in advance for entertainment which he intends to receive for a reasonable time; that he must pay for one night's lodging at the time of being received is quite clear. Doubtless he could be compelled to pay his board for a day in advance if the inn were conducted on the "American plan," but whether the innkeeper could demand payment for a longer period in advance than a single day is doubtful. A bill for entertainment at an inn accrues *de die in diem*,¹³ and the day's charge would seem to be the unit of charge and the limit of the innkeeper's demand.

§ 245. Compensation due as soon as relation is established.

The right to receive compensation for his services accrues to the innkeeper at the moment of the reception of a guest, and indeed the creation of the relation of host and guest and the right to make a charge for services performed are necessarily coincident.¹⁴ From this it would follow that as soon as the guest signs the register and is received into the inn he is bound to pay some compensation, even though he receives no further entertainment than the mere right of remaining in a common room, the liability to pay compensation continues until the guest ceases to bear that character. If he temporarily leaves the inn, intending to return and remaining meanwhile a guest, the innkeeper is entitled to make reasonable charge, even though neither food nor lodging is meantime furnished him.¹⁵

¹² Mulliner v. Florence, 3 Q. B. D. 484, 47 L. J. Q. B. 700, 38 L. T. 167, 26 W. R. 385 (Eng. 1876); Fell v. Knight, 8 M. & W. 276 (1841).

¹³ Doyle v. Walker, 26 Up. Can. Q. B. 502 (1867).

¹⁴ Medawar v. Grand Hotel Co., (1891) 2 Q. B. 11, 60 L. J. Q. B. 209, 64 L. T. 851, 55 J. P. 614.

¹⁵ Smith v. Keyes, 2 Thomp. & C. (N. Y.) 650 (1874).

In an English case a traveller on applying for a room at an inn was told that the inn was full, but that he might occupy a room which would not be needed until night. He went to the room and dressed there. The court intimated that the innkeeper was entitled to compensation, Bowen, L. J., saying: "I think that, as soon as he had taken the plaintiff's luggage up to the room, and had placed it in the room, the innkeeper became entitled to charge the plaintiff for the use of the room, a charge which would be expanded or contracted, according as the plaintiff's occupation of the room was prolonged or not." ¹⁶

§ 246. Compensation ceases when relation ends.

If the guest finally leaves the inn and ceases to be a guest the innkeeper's right to charge for his services as such comes to an end, although circumstances may exist which would give the innkeeper a right to compensation for services rendered. Thus, if upon leaving a guest desires that his room be reserved for him or for someone else whom he may send to the inn, he would be responsible for the rental value of the room.¹⁷ These services, however, are not innkeeper's services, and the amount of charge and methods of enforcing the charge would be governed by the ordinary law of debtor and creditor, not by the law of innkeepers.

§ 247. For what services innkeeper is entitled to compensation.

The obligation of an innkeeper to his guest includes the obligation to render without extra charge the usual and reasonable personal attention to the health and comfort of the guest.¹⁸ For extraordinary services, however, the innkeeper is entitled to make a special, additional charge; for instance, if the guest

¹⁶ *Medawar v. Grand Hotel Co.*, (1891) 2 Q. B. 11, 60 L. J. Q. B. 209, 64 L. T. 851, 55 J. P. 614.

¹⁷ This was so held in the case of a lodging-house keeper, *Sonneborn v. Steinan*, 85 N. Y. Supp. 334 (1903), but it would doubtless be equally true in the case of an innkeeper.

¹⁸ *Kennard v. Hobson*, 1 Houst. (Del.) 36 (1855).

is nursed by the innkeeper through a severe and protracted illness, compensation for the service as nurse is due the innkeeper.¹⁹

§ 248. Entire obligation must be performed.

The innkeeper must perform his entire obligation before he is entitled to any compensation. For instance, if he undertakes to furnish room and board he can make no charge for the room, although he furnishes it, if in point of fact he does not supply the guest with the reasonable board.²⁰ Where, however, there is a separate charge for separate articles of entertainment the innkeeper may be entitled to charge for some of the articles furnished, though he is not entitled to charge for others; for instance, if an innkeeper being unlicensed to sell liquor is unable to recover compensation for liquor furnished, he may, nevertheless, recover such amount as he is legally entitled to charge for board.²¹

§ 249. Which of several guests is liable to pay charges.

Where a party of several persons dines together, and there is no agreement to give credit to any particular one, they are, it would seem, jointly liable for all the charges, not merely liable each for his own share.²² If, however, the host knew that one member of the party had invited the others to dine with him he could hold only the one who is entertaining his friends.²³ And where the party forms a family, the head of the family is the person liable for the whole charge and not the separate members of the family; thus, where a father went to an inn with his daughter, it was held that the daughter was not liable for her father's entertainment, nor it would seem for her own.²⁴

¹⁹ *Ibid.*

²⁰ *Wilson v. Martin*, 1 Denio (N. Y.), 602 (1845).

²¹ *Chase v. Burkholder*, 18 Pa. 48 (1851); *Scattergood v. Waterman*, 2 Miles (Pa.), 323 (1839).

²² *Forster v. Taylor*, 3 Camp. 49 (1811).

²³ So in 1 Rol. Abr., Action sur Case, 24, "As to the host both are liable to pay the reckoning, unless the host knew that B had been invited."

²⁴ *Clayton v. Butterfield*, 10 Rich. Law (S. C.), 300 (1857).

And so where a husband and wife go to an inn together, the wife is not chargeable with any part of the bill, unless indeed it can be shown that the credit was extended to her and not to the husband.²⁵

²⁵ *Birney v. Wheaton*, 2 How. Pr. N. S. (N. Y.) 519 (1885).

CHAPTER XXI.

THE INNKEEPER'S LIEN.

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| <p>Topic I. Nature of the right to lien.</p> <p>§ 251. Nature of innkeeper's lien.</p> <p>252. General rule.</p> <p>253. Lien does not require a binding contract.</p> <p>254. Lien does not cover prior charges.</p> <p>Topic II. To what property the lien extends.</p> <p>255. Every kind of property subject to lien for entire charge.</p> <p>256. Goods received in the inn subject to lien, though the host might have excluded them.</p> <p>257. No lien on the person of the guest.</p> <p>258. No lien on goods which cannot be taken without violation of law.</p> <p>259. Wearing apparel worn by guest.</p> <p>260. Property exempt from execution.</p> <p>Topic III. Against whose property the lien exists.</p> <p>261. Goods of a third person brought by the guest to the inn.</p> <p>262. Knowledge of the innkeeper that the goods do not belong to the guest.</p> | <p>§ 263. The rule in Georgia.</p> <p>264. Goods of a guest not responsible for charges.</p> <p>265. Statutory liens hold only property of the guest.</p> <p>Topic IV. The beginning and continuance of the lien.</p> <p>266. Lien attaches when charges accrue.</p> <p>267. Sale of goods by owner does not affect lien.</p> <p>268. Removal of goods to another State does not affect lien.</p> <p>269. Care of goods held on lien.</p> <p>Topic V. End of the lien.</p> <p>270. Delivery of goods to the guest.</p> <p>271. Delivery induced by fraud.</p> <p>272. Delivery for temporary use.</p> <p>273. Giving payment.</p> <p>274. Attachment of goods by the innkeeper.</p> <p>275. Conversion of the goods.</p> <p>Topic VI. Enforcement of lien.</p> <p>276. Innkeeper's lien cannot be foreclosed by sale.</p> <p>277. Foreclosure in equity.</p> <p>278. Lien as a defence.</p> <p>279. Statutory methods of enforcing the lien.</p> |
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Topic I. *Nature of the right to lien.*§ 251. **Nature of innkeeper's lien.**

The innkeeper, being obliged by law to receive travellers and entertain them, is given by law, not merely the right to com-

pensation from the guest, but also a lien on the goods of the guest in the inn, to the extent of his charges. This lien differs in one respect from other liens created by the common law in that technical possession on the part of the innkeeper is not necessary for the enforcement of the lien. Although the goods remain in the possession of the guest, the innkeeper may prevent their being carried from the inn, take them into his own actual possession, and hold them as security for his charges. In other respects this lien is in its nature and incidents like other liens given by the common law to persons carrying on a public employment, such as carriers and public warehousemen.

§ 252. General rule.

By the common law an innkeeper is entitled to a lien for the amount of his charges on all the goods of his guest which are found in the inn.¹

The charges which are secured by the lien include not merely compensation for entertainment, but also other charges connected with the guest's stay at the inn, as for money lent to the guest by the innkeeper.²

The lien is restricted to charges as between the innkeeper and the one who is his guest in the strict sense. Thus, an innkeeper at common law has no lien on the goods of a boarder,³

¹ Y. B. 5 Ed. 4, 2, pl. 20 (1465); Y. B. 21 Hen. 7, 14, pl. 19 (1505); Thompson v. Lacy, 3 B. & Ald. 283 (Eng. 1820); Proctor v. Nicholson, 7 C. & P. 67 (Eng. 1835); Pollock v. Landis, 36 Ia. 651 (1873); Singer Mfg. Co. v. Miller, 52 Minn. 516, 55 N. W. 56 (1893); Hursh v. Byers, 29 Mo. 469 (1860); Ewart v. Stark, 8 Rich. L. (S. C.) 423 (1832); Dunlap v. Thorne, 1 Rich. L. (S. C.) 213 (1845). Carlisle v. Quattlebaum, 2 Bailey (S. C.) 452 (1831), *contra*, must be regarded as overruled.

² Proctor v. Nicholson, 7 Car. & P. 67 (Eng. 1835); Watson v. Cross, 2 Duv. (Ky.) 147 (1865).

³ Lamond v. Richards, (1897) 1 Q. B. 541, 66 L. J. Q. B. 315, 76 L. T. 141, 45 W. R. 289, 61 J. P. 260; Pollock v. Landis, 36 Ia. 651 (1873); Reed v. Teneyck, 103 Ky. 65, 44 S. W. 356 (1898); Singer Mfg. Co. v. Miller, 52 Minn. 516, 55 N. W. 56, 38 Am. St. Rep. 568, 21 L. R. A. 229 (1893); Hursh v. Byers, 29 Mo. 469 (1860); Ewart v. Stark, 8 Rich. L. (S. C.) 423 (1832); Neale v. Crocker, 8 Up. Can. C. P. 224 (1858).

except of course by special agreement.⁴ So an innkeeper taking horses to board for one who is not a guest, has no lien at common law.⁵ Nor can one who merely keeps a lodging house and lets rooms have a lien.⁶ But it has been held that an innkeeper to whom a horse is committed to be doctored and cured has a lien for his charges, as a farrier,⁷ and that he has a lien for his services on a horse sent to be trained.⁸

§ 253. Lien does not require a binding contract.

This lien is, properly speaking, not created by a contract, but by law; the innkeeper being obliged by law to receive, is given by law the lien. Consequently, by the better view, an innkeeper may maintain his lien even against a guest who is incapable of making a binding contract.⁹ "It was his legal duty to receive the appellee as a guest, and that being the case, the contract was, on his part, compulsory, and the law will not render such a contract on the other side either void or voidable, upon the simple ground of disability arising from infancy. . . . It would be a legal absurdity to compel a man to make a contract, and at the same time permit the other party, who is the instrument of such compulsion, to avoid such contract." ¹⁰

⁴ *Regina v. Askin*, 20 Up. Can. Q. B. 626 (1861).

⁵ *Smith v. Dearlove*, 6 C. B. 132, 17 L. J. C. P. 219, 12 Jur. 377 (1848); *Binns v. Pigot*, 9 Car. & P. 208 (1840); *Hickman v. Thomas*, 16 Ala. 666 (1849); *Taylor v. Downey*, 104 Mich. 532, 62 N. W. 716 (1895); *Elliott v. Martin*, 105 Mich. 506, 63 N. W. 525, 55 Am. St. Rep. 461 (1895); *Grinnell v. Cook*, 3 Hill (N. Y.), 485, 38 Am. Dec. 663 (1842); *Dixon v. Dalby*, 11 Up. Can. Q. B. 79 (1852).

⁶ *Cochrane v. Schryver*, 12 Daly (N. Y.), 174 (1883).

⁷ *Danforth v. Pratt*, 42 Me. 50 (1856).

⁸ *Bevan v. Waters*, 3 Car. & P. 520 (Eng. 1828).

⁹ *Watson v. Cross*, 2 Duv. (Ky.) 147 (1865) (infant). *Contra*, a dictum in *Proctor v. Nicholson*, 7 Car. & P. 440 (Eng. 1835).

¹⁰ *Sampson, C. J.*, in *Watson v. Cross*, 2 Duv. (Ky.) 147 (1865). On the other hand, *Lord Abinger, C. B.*, charging the jury in *Proctor v. Nicholson*, 7 Car. & P. 67, 69 (Eng. 1835), said: "The landlord of an inn may supply whatever things the guest orders, and the guest is bound to pay for them, provided that the guest be possessed of his reason, and is not an infant. In either of these latter cases the landlord must look to himself." This was

§ 254. Lien does not cover prior charges.

The innkeeper's lien is not a general lien, that is, it covers only charges accrued during the last period of entertainment. If the innkeeper once waives his lien by allowing the guest to depart and take away his goods without paying his bill, the charges then due can never afterwards be secured by a detainer of goods brought to the inn by the same guest on a subsequent occasion. This was established in the early case of *Jones v. Thurloe*.¹¹ This was an action of trover against an innkeeper for detaining and converting the plaintiff's horse. The defendant pleaded that the plaintiff owed him money for horse-meat at several times, and that he detained the horse according to the custom for what was due. On demurrer the plea was held bad. The court said that if the innkeeper "give him credit for that time, and let him depart without payment, then he has waived the benefit of that custom by his own consent to the departure, and shall never afterwards detain the horse for that expense. For this custom is founded on the hardship of the innkeeper's case to sue for every little debt, or on a greater hardship, that he may not know where to find him who was his guest after he is gone: therefore, when he has waived that privilege which the law gives him, he must rely on his other agreement."

Topic II. *To what property the lien extends.*

§ 255. Every kind of property subject to lien for entire charge.

Generally speaking the lien extends to all property of every kind brought to the inn by the guest, or left at the inn for the guest, each article of property being security for the whole bill. There is one debt and one lien in respect of the whole of the innkeeper's charges. This proposition has almost never been questioned; it was, however, doubted and litigated in

said *obiter* and without consideration, and must be regarded as unsound, unless the meaning is merely to restrict the innkeeper's claim in such a case to actual necessities. See *ante*, §§ 64, 112.

¹¹ *Jones v. Thurloe*, 8 Mod. 172 (Eng. 1723).

the case of *Mulliner v. Florence*.¹² In that case it appeared that a guest brought with him to the defendant's inn a pair of horses, wagonette and harness. The guest left the inn owing over one hundred pounds for his own entertainment and over twenty pounds for the keep of the horses. The horses belonged in fact to the plaintiff, who tendered the amount due for their keep and demanded that they be given up to him. The court held that he must pay the whole charge. The Lord Justice Bramwell said: "Was it a lien on the horses for the charges in respect of the horses, and on the carriage in respect of the charges of the carriage, and no lien on them for the guest's reasonable expenses, or was it a general lien on the horses and carriage and guest's goods conjointly for the whole amount of the defendant's claim as innkeeper? I am of opinion that the latter was the true view as to his lien, and for this reason, that the debt in respect of which the lien was claimed was one debt, although that was made up of several items. An innkeeper may demand the expenses before he receives the guest, but if he does not, and takes him in and finds him in all things that the guest requires it is one contract, and the lien that he has is a lien in respect of the whole contract to pay for the things that are supplied to him while he is a guest. If this was not the case a man might go to an hotel with his wife, and then it might be said that the innkeeper's lien was on the guest's luggage for what he had consumed, and on the wife's luggage for what she had had. The contract was, that the guest and his horses and carriage shall be received and provided for; there was one contract, one debt, and one lien in respect of the whole of the charges."

§ 256. Goods received in the inn subject to lien, though the host might have excluded them.

There was a tendency in the English cases at one time to restrict the lien to such goods only as the innkeeper is com-

¹² 3 Q. B. D. 484, 47 L. J. Q. B. 700, 38 L. T. 167, 26 W. R. 385 (Eng. 1877).

pelled to receive with his guests. Thus in *Broadwood v. Granara*,¹³ Baron Parke said in the course of the argument: ¹⁴ “The innkeeper has a lien on such goods only as he is compelled to receive with his guests. Could he be indicted for not receiving a pianoforte? It might be a nuisance to persons in his house.” And again, later, the same judge said: ¹⁵ “The principle on which the innkeeper’s lien depends is that he is bound to receive travellers and the goods which they bring with them to the inn.” This notion, however, was unsound, and has been abandoned. The lien secures not merely compensation for care extended to the very goods over which it is exercised, but compensation for charges incurred by the guest for his own entertainment. The innkeeper is bound to receive and entertain the guest; and if he chooses to receive with him goods he is not obliged to receive, his right in those goods, after he chooses to receive them, is the same as his right in any other goods of the guest. “They are in the same position as goods properly offered to the innkeeper according to the custom of the realm.” ¹⁶

§ 257. No lien on the person of the guest.

The lien is restricted to the goods of the guest; his person cannot be detained as security for the charges. In the case of *Sunbolf v. Alford* ¹⁷ the plaintiff sued the defendant, an innkeeper, for assault and battery. The defendant pleaded that the plaintiff was a guest, and as such became indebted to the defendant, and would have left the inn without paying the debt, and for this cause the defendant detained him. The court held the plea insufficient. Lord Chief Baron Abinger said: “If an innkeeper has a right to detain the person of his guest for the non-payment of his bill, he has a right to detain him until the bill is paid,—which may be for life; so that this

¹³ 10 Exch. 417 (1854).

¹⁴ At page 420.

¹⁵ At page 423.

¹⁶ Lord Esher, M. R., in *Robins v. Gray*, (1895) 2 Q. B. 501.

¹⁷ 3 M. & W. 248, 1 H. & H. 13, 7 L. J. Ex. 60, 2 Jur. 110 (Eng. 1838).

defence supposes that by the common law a man who owes a small debt, for which he could not be imprisoned by legal process, may yet be detained by an innkeeper for life. The proposition is monstrous. Again, if he have any right to detain the person, surely he is a judge in his own cause: for he is then the party to determine whether the amount of his bill is reasonable, and he must detain him till the man brings an action against him for false imprisonment, and then if it were determined that the charge was not reasonable, and it appeared that the party had made an offer of a reasonable sum, the detainer would be unlawful." He distinguished the case of lien on goods as an exception to the general law. The lien on goods is doubtless a survival of an ancient power of legally permitted self-help; but in modern times it is an exceptional process, confined to certain classes of cases. This lien has never been extended at common law to any other class of property than tangible personal property; and there is not the slightest authority for extending it to the person of the debtor.

§ 258. No lien on goods which cannot be taken without violation of law.

No lien exists if it would be impossible to exercise it without violating the law. Thus where horses, whether owned by an individual or the government, were employed in transporting the mails, the innkeeper could not hold the horses on lien in such a way as to interfere with the mail.¹⁸ District Judge Winchester said on this point: "The law does not allow any justification of a *wilful and voluntary act* of obstruction to the passage of the mail. . . . Many exceptions might be introduced, and perhaps with propriety. For instance, a *stolen horse found in the mail-stage*. The owner cannot seize him. The driver being in debt, or even committing an offence, can only be arrested in such way as does not obstruct the passage

¹⁸ United States v. Barney, Fed. Cas. No. 14,525, 3 Hughes, 545, 2 Wheeler C. C. 513 (1810). But see United States v. McCracken, 3 Hughes, 544 (1878).

of the mail. These examples are as strong as any which are likely to occur, but even these are not excepted by the statute."

§ 259. Wearing apparel worn by guest.

For this reason no lien can be exercised over clothes actually on the person of the guest, since they could not be detained without a breach of the peace and the risk, at any rate, of indecency.¹⁹

As Baron Parke said in the case cited: "There is, at all events, no power to do what this plea justifies—namely, to strip the guest of his clothes; for if there be, then, if the innkeeper take the coat off his back, and that prove to be an insufficient pledge, he may go on and strip him naked, and would apply either to a male or to a female. That is a consequence so utterly absurd that it cannot be entertained for a moment."²⁰

§ 260. Property exempt from execution.

This principle, however, does not extend so far as to cover property exempt by law from execution; and the lien may be exercised over such property. The privilege of exemption granted to a debtor does not prevent him from voluntarily giving another an interest in such property or subjecting it voluntarily to a lien, as the guest does by taking it with him to an inn.²¹

§ 261. Goods of a third person brought by the guest to the inn.

Where a guest brings to an inn goods ostensibly his, the lien of the innkeeper attaches to the goods though they were in fact the goods of a third person.²²

¹⁹ *Tunbolf v. Alford*, 3 M. & W. 248, 1 H. & H. 13, 7 L. J. Ex. 60, 2 Jur. 110 (Eng. 1838).

²⁰ "The consequence of holding otherwise might be to subject parties to disgrace and duress, in order to compel them to pay a trifling debt, which after all was not due, and which the innkeeper had no pretence for demanding." *Bolland, B.*, in the same case.

²¹ *Swan v. Bournes*, 47 Ia. 501, 29 Am. Rep. 492 (1877).

²² *Johnson v. Hill*, 3 Stark. 172, 23 Rev. Rep. 764 (1822); *Snead v. Wat-*

This was finally determined after considerable difference of opinion by the court of King's Bench in 1616 in the case of *Robinson v. Walter*.²³ In that case Dodderidge, J., said: "He is to receive all guests and horses that come to his inn. He is not bound to examine who is the true owner of the horse brought to his inn, he is bound as he is the innkeeper to receive them and therefore there is very great reason for him to retain him until he be satisfied for his meat that he has eaten, and the true owner cannot have him away until he has satisfied the innkeeper for his meat." And at the reargument the same judge said: "This is a fine trick for the plaintiff to have his horse kept and to give the innkeeper nothing for the same." Croke, J., said: "Here the innkeeper hath done no wrong at all; the owner is to satisfy him for his meat, because he was here compellable to receive him." Some doubt was for a time thought to have been cast on this doctrine by the case of *Broadwood v. Granara*,²⁴ but the Court of Appeal finally dispelled any doubt in the leading case of *Robins v. Gray*.²⁵ In that case a commercial traveller employed by a firm who dealt in sewing machines went to stay at an inn, and whilst there machines were sent to him by his employers in the ordinary course of business for the purpose of selling them to customers in the neighborhood. Before the goods were sent the innkeeper

kins, 1 C. B. N. S. 267, 26 L. J. C. P. 57 (1857); *Turrill v. Crawley*, 13 Q. B. 197, 18 L. J. Q. B. 155, 13 Jur. 878, 13 J. P. 747 (1849); *Threfall v. Borwick*, L. R. 10 Q. B. 210, 44 L. J. Q. B. 87, 32 L. T. 32, 23 W. R. 312 (1875); *Robins v. Gray*, (1895) 2 Q. B. 501; *Black v. Brennan*, 5 Dana (Ky.), 310 (1837); *R. L. Polk & Co. v. Melenbacker* (Mich.), 99 N. W. 867, 11 Detroit Leg. N. 130 (1904); *Singer Mfg. Co. v. Miller*, 52 Minn. 516, 55 N. W. 56, 38 Am. St. Rep. 568, 21 L. R. A. 229 (1893); *Jones v. Morrill*, 42 Barb. 623 (N. Y. 1864); *Waters v. Gerard*, 94 N. Y. Supp. 702 (1905); *Cook v. Kane*, 13 Ore. 482, 57 Am. Rep. 28, 11 Pac. 226 (1886); *Singer Mfg. Co. v. Flannigan*, 7 Pa. Co. Ct. Rep. 45 (1888); *Alvord v. Davenport*, 43 Vt. 30 (1870); *Manning v. Hollenbeck*, 27 Wis. 202 (1870); *Goodyear v. Klemm*, 5 Austral. Jur. 136 (1874); *Hook v. Singer Mfg. Co.*, 11 Natal L. R. 301 (1890). *Contra* *Taylor v. O'Brien*, Que. R. 24 Super. Ct. 407 (1903).

²³ 3 Bulst. 269, 1 Roll. 449 n; Poph. 127 (Eng. 1616).

²⁴ 10 Exch. 417 (Eng. 1854).

²⁵ [1895] 2 Q. B. 501.

had express notice that they were the property of the employers, but he received them as the baggage of the traveller, who subsequently left the inn without paying his board bill. It was held that the innkeeper had a lien on the machines for the amount of the bill. Lord Esher, Master of the Rolls, said: "I have no doubt about this case. I protest against being asked, upon some new discovery as to the law of innkeeper's lien, to disturb a well known and very large business carried on in this country for centuries." Speaking of *Broadwood v. Granara* he said: "There the proposition that if a guest brings goods into an inn as his luggage they must be treated as if they were his goods was fully recognized. The judges held in that case that a piano, not brought to the inn by the guest as his luggage, but sent in by a tradesman for the guest to play upon during his stay at the inn, was not offered to, nor taken possession of by, the innkeeper under the custom of the realm as the luggage of the guest, and therefore that the piano was not subject to the innkeeper's lien. Whether we should have agreed with that decision is immaterial. The case was expressly decided on the ground that the law of innkeepers did not apply. It is, therefore, no authority in the case now before us, where, as the learned judge in the court below has found, the goods were brought to the inn as the goods of the traveller and accepted as his goods by the innkeeper."

§ 262. Knowledge of the innkeeper that the goods do not belong to the guest.

There is some authority for the proposition that if the innkeeper knows that the guest has no title to the goods he brings to the inn, he can claim no lien on the goods.²⁶ This doctrine goes back to a charge of Lord Chief Justice Abbott to the jury at *Nisi Prius* in *Johnson v. Hill*.²⁷ This was an action of

²⁶ *Johnson v. Hill*, 3 Stark. 172 (Eng. 1822); *Broadwood v. Granara*, 10 Exch. 417, 24 L. J. Ex. 1, 1 Jur. N. S. 19, 3 W. R. 25, 3 C. L. R. 177 (1854); *Covington v. Newberger*, 99 N. C. 523, 6 S. E. 205 (1888, *seemingly*); *Cook v. Kane*, 13 Or. 482, 57 Am. Rep. 28, 11 Pac. 226 (1886, *semble*); *Cook v. Singer Mfg. Co.*, 11 Natal L. R. 301 (1890).

²⁷ 3 Stark. 172, 174 (Eng. 1822).

trover brought by the true owner of goods against an innkeeper who had refused to deliver the goods on demand, asserting a lien. The goods had been illegally seized, under color of legal process, and taken by the wrongdoer to the inn. The Lord Chief Justice charged the jury that "the question was, whether the defendant knew, at the time when the horse was delivered into his custody, that Pritchard was not the owner of the property, but a mere wrongdoer; if he knew that fact, he made himself a party to the wrongful act of Pritchard, and could not insist on any recompense for keeping the horse."

This reason extends, therefore, only to a case where the possession of the guest is wrongful, and is known to the innkeeper to be so; and to this extent the doctrine is undoubtedly correct. The case of *Broadwood v. Granara* ²⁸ was very different in its facts. The guest, a professional pianist, borrowed from the plaintiff a piano to practice upon while he stayed in the inn. The defendant, the innkeeper, knew all the facts at the time the piano was brought to the inn. The court denied the existence of the lien, but principally on the ground that the piano was brought to the inn after the guest arrived, under a definite contract of bailment. Baron Alderson said: "The pianoforte was not brought to the inn by the guest, but was sent there by the plaintiffs, the defendant knowing that it was theirs; then how can it be said that the defendant received it as the goods of the guest?" Chief Baron Pollock said: "This is the case of goods, not brought to the inn by a traveller *as his goods*, either upon his coming to or whilst staying at the inn, but they are goods furnished for his temporary use by a third person, and known by the innkeeper to belong to that person."

The real reason for denying a lien in this case seems to be the definite bailment relation between the owner and the guest, known to the innkeeper. If the goods had been rented to the guest for six months, the innkeeper could probably have maintained his lien during the six months; here they were delivered for a period determinable at the will of the bailor, and

²⁸ 10 Exch. 417, *supra*.

the guest would be guilty of trover if he detained them after demand, and in the language of *Johnson v. Hill* ²⁹ the defendant made himself a party to the conversion by detaining them after such demand. This point is brought out by the Lord Justice Kay in *Robins v. Gray*.³⁰ Speaking of *Broadwood v. Granara*, he said: "An analogous case to that was put by the Master of the Rolls during the argument of the present case. Suppose a jeweller in the town sent, with the knowledge of the innkeeper, certain jewels to a guest at the inn on approval, and allowed them to remain in the inn for some days—could the innkeeper claim and enforce a lien upon those jewels? I should think he could not, because they were sent for a special temporary purpose, and the innkeeper knew it; they were, therefore, not sent as the goods—I do not mean as the property—of the guest; they were not goods which he was likely to take about with him as his luggage."

Suppose, however, the goods are brought to the inn rightfully by the guest, under an arrangement by which he is entitled to hold them indefinitely; or suppose the guest brings them in pursuance of an agreement by which he is using them according to the owner's desire; in such a case the innkeeper should have a right to the lien even though he is aware that the guest is not the legal owner of the goods. So if the guest is to the knowledge of the innkeeper a servant or agent, employed by the owner to deal with the goods he brings to the inn, the lien may be enforced on the goods against the master.³¹ Lord Esher, Master of the Rolls, said in *Robins v. Gray*:³² "I am of opinion that an innkeeper is bound to take in goods with which a person who comes to an inn is travelling as his goods, unless they are of an exceptional character; that the

²⁹ 3 Stark. 172 (1822).

³⁰ [1895] 2 Q. B. 501.

³¹ *Robins v. Gray* (1895), 2 Q. B. 501, 65 L. J. Q. B. 44, 14 Rep. 671, 73 L. T. 252, 44 W. R. 1, 59 J. P. 741. And see *Snead v. Watkins*, 1 C. B. N. S. 267, 26 L. J. C. P. 57, 21 J. P. 263 (Eng. 1857); *Fogarty v. Dion*, 6 Quebec L. R. 163 (1880).

³² *Supra*.

innkeeper's lien attaches, and that the question of whose property the goods are, or of the innkeeper's knowledge as to whose property they are, is immaterial." The best rule, that involved in this decision, appears to be that knowledge of the innkeeper that the goods are owned by a third party is immaterial in a case where the owner bails them to the guest to take in the ordinary way to the inn like his own goods.

§ 263. The rule in Georgia.

In Georgia it is held that no lien can be exercised over goods of one not a guest except for charges on the specific article on which the lien is claimed.³³ But this doctrine appears to be confined to that State.

§ 264. Goods of guest not responsible for charges.

Where several people go together to an inn, but one of them only is responsible for paying the bill, only property which is really or ostensibly the property of the responsible party can be held on lien for the charges. Thus where a father and his daughter went to an inn, under such circumstances that the father alone was responsible for the bill, the host could not hold the daughter's goods as security for the payment of the bill.³⁴ And so where a husband and wife go together to an inn, the credit being extended to the husband, there is no lien on property evidently belonging to the wife,³⁵ though if the credit were extended to the wife her goods could be held, and not the husband's.³⁶ Where the wife goes alone to the inn, but the husband is liable, the wife's goods cannot be held.³⁷

§ 265. Statutory liens hold only property of the guest.

Where the lien is given by statute it is usually limited to the

³³ Domestic Sewing Machine Co. v. Watters, 50 Ga. 573 (1874).

³⁴ Clayton v. Butterfield, 10 Rich. Law (S. C.), 300 (1857). In this case the daughter tendered the amount of the charges incurred on her account; if she had not tendered this, the lien would not have been valid, as it seems, even to that extent, since she owed no debt.

³⁵ Birney v. Wheaton, 2 How. Pr. N. S. (N. Y.) 519 (1885); McIlvane v. Hilton, 7 Hun (N. Y.), 594 (1876: a case of a boarding-house keeper's lien).

³⁶ Birney v. Wheaton, 2 How. Pr. N. S. (N. Y.) 519 (1885).

³⁷ Baker v. Stratton, 52 N. J. Law, 277, 19 Atl. 661 (1890).

property of the guest; the lien cannot be exercised upon property of a third person, even if it was brought to the house by the guest as his own property.

This is generally held even in case of a statutory innkeeper's lien, though the statute was apparently not intended to change the provisions of the common law.³⁸ *A fortiori* a statute which extends to boarding-house keepers or lodging-house keepers a lien on the goods of the boarder or lodger does not create a lien on the goods of a third person in the hands of the boarder or lodger, even if they are ostensibly the property of the boarder or lodger.³⁹ And so the statutory lien of the livery-stable keeper can be exercised only against the person to whom he extended credit.⁴⁰

Topic IV. *The Beginning and Continuance of Lien.*

§ 266. Lien attaches when charges accrue.

The lien attaches as soon as the charge is incurred, that is, as soon as the guest is received, even if the time for payment has not arrived. So in a Massachusetts case it appeared that the defendant was a boarder at the plaintiff's house, paying his board by the week at the end of the week. A week's board would be due on Saturday night; on Saturday morning the defendant undertook, against the will of the plaintiff, and with-

³⁸ Wyckoff v. Southern Hotel Co., 24 Mo. App. 382 (1887); McClain v. Williams, 11 S. D. 227, 76 N. W. 930, 74 Am. St. Rep. 791, 49 L. R. A. 610 (1898); Torrey v. McClellan, 17 Tex. Civ. App. 371, 43 S. W. 64 (1897). In Iowa the statute expressly provides for a lien on property "belonging to or under control of" the guest; and this obviously covers property of a third person brought to the inn by a guest. Brown Shoe Co. v. Hunt, 103 Ia. 586, 72 N. W. 765 (1897).

³⁹ Mills v. Shirley, 110 Mass. 158 (1872); Misch v. O'Hara, 9 Daly (N. Y.), 361 (1880); Barnett v. Walker, 39 N. Y. Misc. 323, 79 N. Y. Supp. 859 (1902). But see a different holding under the earlier form of the statute. Jones v. Morrill, 52 Barb. 623 (1864); Newcombe v. Anderson, 11 Ont. 665 (1886).

⁴⁰ Gump v. Showalter, 43 Pa. 507 (1862); McManigle v. Crouse, 1 Walker (Pa.), 43 (1887).

out paying anything for board during the week, to remove his baggage; and upon the plaintiff interfering, he forcibly removed her from the room. The plaintiff brought an action for assault and battery, and the defendant set up in defence his right to remove his property. The Supreme Court, however, held that the lien existed, and the plaintiff could recover. Mr. Justice Morton said: "Otherwise, a guest who had obtained credit upon the strength of the lien might destroy the security . . . by a sale or by removing the goods at any time before the bill for board became payable by the contract; a result which is inconsistent with the nature of the lien."⁴¹

§ 267. Sale of goods by owner does not affect lien.

A sale of the property by the guest to a third person does not terminate the lien; the innkeeper may retain the goods against the purchaser for all charges accrued (even after the sale) until notice of the sale is received by the innkeeper. So in a Massachusetts case it appeared that a [boarder brought property to the plaintiff's boarding house in which he was boarding; after a time he sold the property to a third person. He paid his board up to the time of the sale, but afterwards remained, retaining possession of the goods, and contracted a debt for board. The housekeeper had no notice of the sale. The defendant, a sheriff, took the goods on a writ against the purchaser, and the plaintiff brought suit for conversion. It was held that the plaintiff had a lien.⁴² Mr. Justice Hoar said: "The plaintiff had no notice of the sale; and we think that, within the meaning of the statute, she had a right to continue to furnish board, on the security of the lien, until such notice was given, if the property remained in the house. Otherwise, a boarder, who had obtained credit on the strength of the lien which the law gave upon his property, might deprive the

⁴¹ *Smith v. Colcord*, 115 Mass. 70 (1874). This was the case of a statutory boarding-house keeper's lien; but the reasoning would equally apply to the common-law lien of an innkeeper.

⁴² *Bayley v. Merrill*, 10 All. (Mass.) 360 (1865).

boarding-house keeper of the security by an immediate sale. The statute creates the pledge of the property, when the owner brings it, for whatever may be due while he stays." Though this was the case of a statutory lien, the principle involved is obviously applicable to the common-law lien of the innkeeper. Indeed, it would naturally follow, in the case of the innkeeper, from the well-established doctrine that the lien holds goods even of a third party brought to the inn as goods of the guest.

§ 268. Removal of goods to another State does not affect lien.

The lien is not lost by taking the goods into another State, even if no such lien would be created by the law of the latter State; for the lien once having attached to the goods remains, wherever they may be taken by the innkeeper. In a New Hampshire case the facts were that one S. in Massachusetts held a trunk belonging to plaintiff's son under a lien for board; and at plaintiff's request she sent the trunk to him, in New Hampshire, by the defendant express company, C. O. D. The plaintiff tendered the charges for carriage only, and demanded the trunk; and upon the defendant refusing to give it up he brought this action of replevin. The Supreme Court gave judgment for the defendant.⁴³ Mr. Justice Stanley said: "In this case, there is an attempt to divest S. of her lien, and there is no reason why she may not defend her title as well as if she were the absolute owner residing in Massachusetts and a suit were brought to take the property from her. The lien of S. was as perfect as the lien under a mortgage made and executed in Massachusetts in accordance with their laws would be. In such cases the title under the mortgage could be shown, and would be a defence." (1)

§ 269. Care of goods held on lien.

An innkeeper holding goods on lien is bound to take due care of the goods, which is said to be the care which he takes of his own goods of a similar description. So where an innkeeper

⁴³ Jaquith v. American Express Co., 60 N. H. 61 (1880).

who was holding clothing and furs on a lien, put them into a closet with similar goods of his own, and they were injured by moths and mice, it was held that that amount of negligence which would make an innkeeper liable had not been shown.⁴⁴ He may make reasonable use of the goods if such use is beneficial to the owner, as, for instance, in the case of live animals; but in that case he is bound to account for the value of the use. This question was discussed in a Vermont case.⁴⁵ An innkeeper while holding a horse on lien learned that the horse really belonged not to the guest but to someone from whom it had been stolen; and under these circumstances he made use of the horse. The court held this action proper under the circumstances. The right of the bailee to use the property, the court said, depended, in the absence of express agreement, upon the circumstances. Thus, if the use would be for the benefit of the property the consent of the owner might fairly be presumed, but not if it would be injurious or perilous; while if the use would be indifferent, other circumstances might determine it. "It is generally not only the right, but the duty, of the bailee to use the property so far as necessary to its preservation. To this extent the assent of the owner may be presumed—as in case of the milking of a milch cow; and in case of a horse, exercise and moderate use to the extent necessary to the health and vigor of the animal. Again, it is laid down by the elementary writers that the right to use the property may depend on whether it is property of a nature that requires expense to keep it; and if so, the bailee may use it reasonably to compensate him for the charge of keeping." Under the circumstances of this case it was reasonable to use the horse. The innkeeper did not know the owner, nor had he any reason to suppose that the owner would appear. Even though his lien was good against the owner, still he might hold the horse until it died without being paid,

⁴⁴ *Angus v. McLachlan*, 23 Ch. D. 330, 52 L. J. Ch. 587, 48 L. T. 863, 31 W. R. 641 (Eng. 1889).

⁴⁵ *Alvord v. Davenport*, 43 Vt. 30 (1870).

and then his only security for payment would be gone. "Under such circumstances, the defendant had a right to use the property moderately and prudently, to the extent of compensating him for his charges, in the manner that the case shows he did use it. Whether the actual assent of the plaintiff in the meantime is presumed or not, it is fairly to be presumed that if the plaintiff had known the facts he would have assented. The use of the property has manifestly benefited the plaintiff, for, but for that, the expense of keeping for the four years would probably have exhausted the whole property."

The value of the use must, however, be credited on the lien. "The defendant, having lawfully used the property, must account for the use upon his charges for trouble and expense of keeping the property; and the court having found that it is a full equivalent, the defendant had no lien upon the property."

Topic V. *End of Lien.*

§ 270. **Delivery of goods to the guest.**

The lien is at an end when the innkeeper voluntarily delivers the goods to the guest.⁴⁶ But a mere executory agreement to give up the goods, made without consideration, does not put an end to the lien.⁴⁷

§ 271. **Delivery induced by fraud.**

If the innkeeper is induced to give up the goods by fraud, the lien continues in spite of the delivery, or rather the innkeeper has the right to renew it; he may recover the goods by legal process, or otherwise, and the lien will again attach to them.⁴⁸

§ 272. **Delivery for temporary use.**

The innkeeper may allow the guest to take the goods tem-

⁴⁶ Jones v. Thurloe, 8 Mod. 172 (Eng. 1723); Danforth v. Pratt, 42 Me. 10 (1856); Grinnell v. Cook, 3 Hill (N. Y.), 486 (1842).

⁴⁷ Danforth v. Pratt, 42 Me. 50 (1856).

⁴⁸ Manning v. Hollenbeck, 27 Wis. 202 (1870).

porarily without parting with his lien; as, for instance, where a horse is put up at an inn and the guest drives it out from time to time, the innkeeper does not lose his lien.⁴⁹

In such a case the better view appears to be that the lien continues even during the temporary possession of the guest. A creditor attached the horse of a guest at an inn while the guest was driving the horse in the neighborhood of the inn; the innkeeper's lien was held to have priority over the attachment.⁵⁰ But the opposite opinion has also been held.⁵¹

§273. Giving payment.

The lien is of course destroyed by payment of the debt. And so where the innkeeper owes the guest for labor more than the guest owes for food, and the guest has a right to set off the amount due him against his debt, there is no lien.⁵² But a mere agreement to accept security for the bill if it is not inconsistent with the lien, does not put an end to it.⁵³

§274. Attachment of goods by the innkeeper.

The lien is not destroyed by the innkeeper attaching the goods held by him on lien in an action to recover his charges. So far from being a waiver of his security, this is an attempt to obtain additional security. The innkeeper, like any other creditor, may attach subject to the lien. This question was fully discussed in a suit in West Virginia⁵⁴ upon a statutory

⁴⁹ *Allen v. Smith*, 12 C. B. N. S. 638, 31 L. J. C. P. 306, 9 Jur. N. S. 230, 6 L. T. 459, 10 W. R. 646; affirmed, 9 Jur. N. S. 1284, 11 W. R. 440 (Eng. 1862); *Huffman v. Walterhouse*, 19 Ont. 186 (1890).

⁵⁰ *Caldwell v. Tutt*, 10 Lea (Tenn.), 258, 43 Am. Rep. 307 (1882).

⁵¹ *Crabtree v. Griffith*, 22 Up. Can. Q. B. 573 (1863). And see *Grinnell v. Cook*, 3 Hill (N. Y.), 486 (1842).

⁵² *Hamlin v. Walters*, 3 Col. App. 519, 34 Pac. 686 (1893).

⁵³ *Angus v. McLachlan*, 23 Ch. D. 330, 52 L. J. Ch. 587, 48 L. T. 863, 31 W. R. 641 (Eng. 1889).

⁵⁴ *Lambert v. Niklass*, 45 W. Va. 527, 31 S. E. 951, 44 L. R. A. 561 (1898). See *contra*, however, *Jacobs v. Latour*, 5 Bing. 130 (Eng. 1828), where the lien of a horse trainer was held lost when he caused the horse to be taken in execution at his own suit; the court saying in explanation that "in order to sell, the sheriff must have had possession."

stable-keeper's lien. The argument against the continuance of the lien was based on two grounds: First, that the lien was destroyed by the judgment; second, that the possession taken by the sheriff necessarily put an end to the lien, since that depended on maintaining possession. To the first point the court replied that the debt is one thing and the lien another; and though the debt is merged in the judgment the lien continues and secures the judgment. On the second point the court said that the only method of enforcing the lien provided by the common law is by judicial process; and this seems to be a reasonable process. "He is not thus waiving, but enforcing his lien. Why it should be said that, when the officer levies on the property to enforce this lien the innkeeper loses his lien because he gives up possession, I cannot see. The officer is his agent for this purpose. To say so is technical in the highest degree, and defeats justice. The innkeeper is not surrendering possession to the owner, nor to an officer acting in furtherance of his demand. He could bring a suit, as shown above, without forfeiting his lien; and by resorting to an attachment he simply availed himself of a fact giving him the right to attachment to enforce a debt for which there was a lien, using a cumulative remedy."

§ 275. Conversion of the goods.

Conversion of the goods or wrongful dealing with them by the innkeeper while he holds them on lien puts an end to the lien. Thus, if the innkeeper refuses to give up the goods upon a good tender of the amount due, he is guilty of a conversion; but not where the tender is not a good one.⁵⁵ In England, the effect is not only to destroy the lien, but also to make the innkeeper liable for the entire value of the goods, without deducting his charges.⁵⁶ In the United States, however, though the lien is lost the innkeeper may deduct the

⁵⁵ *Gordon v. Cox*, 7 Car. & P. 172 (Eng. 1835).

⁵⁶ *Mulliner v. Florence*, 3 Q. B. D. 484, 47 L. J. Q. B. 700, 38 L. T. 167, 26 W. R. 385 (1876).

amount of his charges from the value of the goods.⁵⁷ The fact that the innkeeper claims a lien for a greater amount than he has a right to do does not destroy his lien for the rightful amount, provided he does not convert the goods by refusing a tender of the correct amount.⁵⁸

Topic VI. *Enforcement of Lien.*

§ 276. Innkeeper's lien cannot be foreclosed by sale.

An innkeeper holding goods on lien cannot sell the goods without legal process to reimburse himself, even though the care and keeping of the goods necessitates expense.⁵⁹ Nor can he pledge the goods.⁶⁰

By the custom of London an innkeeper was entitled to sell a horse held on lien as soon as the horse had eaten his value; but this was a local custom, and never formed part of the law of England.⁶¹

§ 277. Foreclosure in equity.

The proper method of enforcing the lien, in the absence of

⁵⁷ This appears not to have been the subject of judicial decision in the case of an innkeeper's lien, but it is well settled in the case of similar liens. 1 Sedg. Dams. § 80.

⁵⁸ Allen v. Smith, 12 C. B. N. S. 638, 31 L. J. C. P. 306, 9 Jur. N. S. 230, 6 L. T. 459, 10 W. R. 646; affirmed, 9 Jur. N. S. 1284, 11 W. R. 440 (Eng. 1862).

⁵⁹ Westbrook v. Griffith, F. Moore, 876 (Eng. 1608); Mulliner v. Florence, 3 Q. B. D. 484, 47 L. J. Q. B. 700, 38 L. T. 167, 26 W. R. 385 (Eng. 1876); Case v. Fogg, 46 Mo. 44 (1870); Fox v. McGregor, 11 Barb. (N. Y.) 41 (1851); Gildea v. Earle, 2 City Ct. R. (N. Y.) 122 (1885).

⁶⁰ People v. Husband, 36 Mich. 306 (1877).

⁶¹ Rosse v. Bramstead, 2 Roll. Rep. 438 (Eng. 1623); Warbrooke v. Griffin, 2 Brownl. & Gold. 254 (Eng. 1609). "If one brings a horse to an inn, leaves him there and goes his way, and the horse eats up more than his price, by the custom of London the innkeeper may sell this horse to pay himself, but not if the debt was for other horses, as if one do bring many horses into an inn, and afterwards takes all of them away but one, the innkeeper cannot sell this one horse for payment of that which was due to him for the other horses, by the custom of London, notwithstanding the debt doth amount to more than the price of this horse; but every horse is to be sold, by the custom, to satisfy the debt due for his own meat only," Mosse v. Townsend, 1 Bulst. 207 (Eng. 1612).

statute, is by a bill in equity to foreclose the lien; and on such a bill the court may order the sale of the goods.⁶² If, however, there is an adequate remedy provided by statute the bill in equity will not lie.⁶³

§ 278. Lien as a defence.

The lien may be set up at common law in defence; as, for instance, where an action is brought by the owner for converting the goods by refusing to allow the owner to take them from the inn.⁶⁴ The lien may also be set up in an answer to a suit in replevin brought by the owner to obtain possession of his goods.⁶⁵

§ 279. Statutory methods of enforcing the lien.

Statutory methods of enforcing the lien are provided in some States.⁶⁶

⁶² *Black v. Brennan*, 5 Dana (Ky.), 310 (1837); *Fox v. McGregor*, 11 Barb. (N. Y.) 41 (1851); *Gildea v. Earle*, 2 City Ct. Rep. (N. Y.) 122 (1885).

⁶³ *Coates v. Acheson*, 23 Mo. App. 255 (1886).

⁶⁴ *Proctor v. Nicholson*, 7 Car. & P. 67 (Eng. 1835).

⁶⁵ *Pollock v. Landis*, 36 Ia. 651 (1873).

⁶⁶ *Connecticut*. The statute permits sale to foreclose the lien in certain cases; there being no requirement in the statute for notice to the owner of the sale, such notice need not be given. *Brooks v. Harrison*, 41 Conn. 184 (1874). *Missouri*. A judgment for the debt is a prerequisite to enforcing the lien. *Coates v. Acheson*, 23 Mo. App. 255 (1886). And though a case is not made out for enforcing the lien, judgment may be given for the amount of debt proved. *Hods v. Benecke*, 11 Mo. App. 393 (1882). Though the statutory method of enforcement, by sale, does not aptly apply to a lien on wages, yet the enforcement must be according to the statute; the lien cannot be enforced by garnishment. *Hods v. Benecke*, 11 Mo. App. 393 (1882).

TITLE V.

REMEDIES AGAINST INNKEEPER.

CHAPTER XXII.

ACTION AGAINST INNKEEPER.

§ 281. Nature of action.

282. Form of action.

283. The declaration.

§ 284. Survival of action.

285. Who may sue.

§ 281. Nature of action.

An action against an innkeeper for injury to a guest or his goods is in its essence an action for breach of his undertaking at the time he accepted the guest; an undertaking growing out of his consent to receive the guest, but not properly a contract, since the terms of the undertaking are fixed by law, and not by agreement of the parties. An action against an innkeeper for refusal to perform his public duty is still more clearly for breach of an undertaking imposed by law, and not growing out of an agreement by the parties.

This kind of action was one well known in earlier times; it was an action on the case upon the *super se assumpsit*. As Lord Holt said in *Coggs v. Bernard*,¹ explaining the difference between such an action and one for the breach of an executory contract, "*assumpsit* does not only signify a future agreement, but in such a case as this it signifies an actual entry upon the thing, and taking the trust upon himself." Actions on the case induced by an *assumpsit* included, therefore, both actions for breach of a contract made on good consideration, and ac-

¹ 2 Ld. Raym. 909 (1703).

tions for breach of a non-contractual undertaking upon performance of which the defendant had entered.²

When those actions in which the *assumpsit* was of a present trust were differentiated from those in which it was executory, the former would properly have united with the old action of detinue, founded on bailment, to make up the grand division of undertakings, just as the latter did in fact unite with actions of debt and covenant to form the grand division of actions sounding in contract. But no separate division of acts based on undertaking was ever formed. Bailments were, after a struggle, included with contracts; and other undertakings, not being of sufficient importance to form a separate division of actions, either followed bailments, or with other actions on the case sank back into the division of torts. In most cases this fact is marked by the singular doctrine that a breach of an undertaking like that of a carrier or innkeeper to a particular person may be redressed by an action sounding in tort or by one sounding in contract, at the plaintiff's option. This option, however, does not extend to the case where the person who has undertaken a public employment refuses to exercise his employment for the benefit of a person having a right to demand it. For such a breach of obligation the remedy is in tort only.

§ 282. Form of action.

For refusal to receive a traveller as a guest, therefore, redress against the innkeeper must be had by the injured party in an action on the case sounding in tort.³ For injury to the person or property, the action may be either *assumpsit* for breach of the "implied contract,"⁴ or, as is more usual, an ac-

² Such an action is distinguished from a tort in Y. B. 43 Edw. 3, 33, pl. 38 (1368); from a contractual action in Y. B. 11 Hen. 4, 33, pl. 60 (1410); Y. B. 2 Hen. 4, 3, pl. 9 (1400).

³ Anonymous, Godbolt, 345, pl. 440 (1623); Rex v. Collins, Palmer, 373 (1623).

⁴ Clancy v. Barker, (Neb.), 98 N. W. 440 (1904); Morgan v. Ravey, 6 H. & N. (Eng.) 265 (1861).

tion on the case.⁵ Even for entire destruction or loss of the goods, the innkeeper is not liable in trover, unless an actual conversion is shown.⁶

§ 283. The declaration.

The declaration against the innkeeper need not set out the customary liability of innkeepers, since that is part of the law of the land,⁷ but it must allege the defendant to be an innkeeper,⁸ and must state the existence of the relation of host and guest between the parties at the time of the injury.⁹

§ 284. Survival of action.

An action against the innkeeper for personal injury will not survive against the executors of the innkeeper, since the injury is a merely personal one;¹⁰ while an action for injury to the guest's property will survive both against the innkeeper and in favor of the representative of the guest.¹¹ In the case of *Saunders v. Plummer*, just cited, Lord Chief Justice Bridgman said: "This action here, in the principal case, is not merely in nature of an action of trespass, founded upon a tort, though it be called trespass upon the case. So neither is it grounded merely upon a contract; for it is mixed with negligence and special prejudice, by his not keeping the horse of his guest, with which he was intrusted; and, therefore, it is more doubtful whether the executor had any remedy at the common law; because, though the action had something of crime or fault,

⁵ *Norcross v. Norcross*, 53 Me. 163 (1865); *Stanley v. Bircher*, 78 Mo. 245 (1883); *People v. Willett*, 26 Barb. (N. Y.) 78 (1857).

⁶ *Hallenbake v. Fish*, 8 Wend. (N. Y.) 547, 24 Am. Dec. 88 (1832).

⁷ *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72 (1848).

⁸ *Horslow's Case*, Y. B. 22 Hen. 6, 21, pl. 38 (1444). "Being entertained as a guest at defendant's inn" sufficiently alleges that defendant is an innkeeper. *Norcross v. Norcross*, 53 Me. 163 (1865).

⁹ *Towson v. Havre de Grace Bank*, 6 Har. & J. (Md.) 47, 14 Am. Dec. 254 (1823). "Being a public innkeeper, received the horses as such" sufficiently alleges the relation. *Peet v. McGraw*, 25 Wend. (N. Y.) 653 (1841).

¹⁰ *Stanley v. Bircher*, 78 Mo. 245 (1883).

¹¹ *Morgan v. Ravey*, 6 H. & N. (Eng.) 265 (1861); *Saunders v. Plummer*, O. Bridg. 223 (1662).

the action is *per defectum bonæ custodiæ*. . . . In this case, there is *contractus*, or *quasi contractus*, between the guest and the innkeeper. . . . The law forceth the guest to make a recompense. If he pay not, he may detain his horse, and is not bound to his action; or if he will bring his action, he may without any special contract have an action for his horse, and all the meat, drink, lodging, and other accommodations which he had at the inn. So that now the law makes the contract; and his not safely delivering the horse, though it be occasioned by his own negligence, yet is a breach of his contract in law, which was to keep, preserve, and restore the horse. If there had been an *assumpsit* in fact to deliver goods, though they were after stolen, an action would lie by the executor for breach of it by the common law; the same reason here upon an *assumpsit*, or contract in law. And this is the main reason that moves me in this case."

§ 285. Who may sue.

An innkeeper may be sued as such for loss of goods only by the guest. If one lends his property to another, and the bailee comes with it to an inn and it is there lost, the guest alone may enforce the innkeeper's peculiar liability.¹² If, however, the guest is a member of the owner's family the owner may sue; so a father may sue the innkeeper for the loss of his goods taken to an inn by his minor son,¹³ or a master for his goods taken to an inn by his servant,¹⁴ or a partner for goods of the firm taken to an inn by another partner.¹⁵

¹² Robinson v. Waller, 1 Rol. Abr. 3, pl. 6 (1617); Coykendall v. Eaton, 55 Barb. (N. Y.) 188, 37 How. Pr. 438 (1869); Chandler v. Haas, 12 York Leg. Rec. (Pa.) 127 (1899).

¹³ Dickinson v. Winchester, 4 Cush. (Mass.) 114 (1849); Epps v. Hinds; 27 Miss. 657, 61 Am. Dec. 528 (1854); Coykendall v. Eaton, 55 Barb. (N. Y.) 188, 37 How. Pr. 438 (1869); Read v. Amidon, 41 Vt. 15 (1868).

¹⁴ Robinson v. Waller, 1 Rol. Abr. 3, pl. 7 (1617); Beedle v. Morris, Cro. Jac. 224, Yelv. 162 (1609); Candy v. Spencer, 3 F. & F. 306 (1862); Becker v. Haynes, 29 Fed. 441 (1887); Berkshire Woolen Co. v. Proctor, 7 Cush. (Mass.) 417 (1851).

¹⁵ Needles v. Howard, 1 E. D. Smith (N. Y.), 54 (1850).

The reason for these decisions is that the legal possession of the goods at the time of the injury is in the father or master, and he is permitted to sue directly for an injury to his possession. The bailee has an independent possession, and the bailor should therefore have no action based on the duty of innkeeper. If the innkeeper committed an active tort, as, for instance, by converting the goods to his own use, the bailor should of course have an action, as any owner would have; but this is quite independent of the action based on the liability of the innkeeper.

This distinction appears to have been lost sight of by the courts in a few cases. In Maryland, a bailee of money became a guest at an inn, and the money was stolen. The owner of the money was allowed to sue the innkeeper for the loss.¹⁶ The innkeeper was chargeable, the court said, not on the ground that the owner was a guest, but because the innkeeper received, no matter from what hand, a compensation for the risk.

In an early case in Massachusetts the owner of a horse which had been hired and taken to the inn by the guest was allowed to sue for the loss of it. The guest was described in the declaration and the opinion of the court as the plaintiff's servant, but she was obviously a bailee.¹⁷ In a later case in Massachusetts (where, in fact, the guest was a servant) a dictum of the court in *Bedle v. Morris*, as reported by Yelverton,¹⁸ is cited: "Moreover it is not material whether he was his servant or not; for if it was his friend by whom the party sent the money, and he is robbed in the inn, the true owner shall have the action." This dictum is probably the source of the error; but though it seems incorrect it does not justify the inference that an ordinary bailor can sue.

¹⁶ *Towson v. Havre de Grace Bank*, 6 Har. & J. (Md.) 47, 14 Am. Dec. 254 (1823). And see to the same effect *Walker v. Sharpe*, 31 Up. Can. Q. B. 340 (1871).

¹⁷ *Mason v. Thompson*, 9 Pick. (Mass.) 280, 20 Am. Dec. 471 (1830).

¹⁸ Yelv. 162; the dictum does not occur in the report of the same case. Cro. Jac. 224 (Eng. 1609).

TITLE VI.

OTHER PUBLIC HOUSES.

CHAPTER XXIII.

THE BOARDING HOUSE.

§ 291. Difference between boarding house and inn.	§ 295. Care in the admission of persons as boarders.
292. Responsibility of keeper for goods of boarder.	296. Contributory negligence of the boarder.
293. Responsibility for negligence of servant.	297. Special undertaking of the Boarding-house keeper.
294. Nature of care required.	298. boarding-house keeper's lien.

§ 291. Difference between boarding house and inn.

The boarding house, as has already been seen,¹ is a house for the entertainment of persons who make a more or less permanent residence in it. Its patrons are not, like those of an inn, engaged on a journey; they have time to find out a satisfactory house and make a fair bargain with the keeper of it before engaging accommodations. The difference between them, therefore, is that an inn is a house which undertakes to serve the immediate necessities of a traveller while engaged on a journey; a boarding house is a house provided for a permanent habitation for more or less settled residents of the place.² And therefore a hotel at a watering place which takes only such guests as come to stay for a time for pleasure is a

¹ *Ante*, §§ 14, 32.

² *Parker v. Flint*, 12 Mod. 254 (Eng. 1701); *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Beall v. Beck*, Fed. Cas. No. 1161, 3 Cr. C. C. 666 (D. C. 1829); *Willard v. Reinhardt*, 2 E. D. Smith (N. Y.), 148 (1853); *Commonwealth v. Cuncannon*, 3 Brewst. (Pa.) 344 (1869).

boarding house, not an inn.³ There is no need for a special and severe requirement of law to protect boarders, since there is time for a boarder to protect himself in any arrangement he may make for his board.⁴

A boarding house, as well as an inn, may be called a "hotel."⁵

Though not engaged in a public employment, the keeper of a boarding house is carrying on a business which may be so conducted as to become a nuisance; and it is therefore an occupation which concerns the police power. The business may therefore constitutionally be regulated.⁶

§ 292. Responsibility of keeper for goods of boarder.

The responsibility of a boarding-house keeper for the goods of his boarder is the same as that of the innkeeper for the goods of the boarder; that is, being a case of so-called bailment for mutual benefit, the relation imposes upon the boarding-house keeper a duty to exercise ordinary care to protect the goods intrusted to him against loss by theft or otherwise, and subjects him to responsibility for "ordinary negligence," that is, omission to exercise ordinary care.⁷

But while the standard of care is the same, the question of fact, namely, what constitutes due care, is to be determined with reference to the acts undertaken by a boarding-house keeper, which are in some respects different from the acts undertaken by an innkeeper as to his boarders. Thus, for instance, it is the innkeeper's duty to keep servants to guard the rooms of the guests from theft, the outer door being open to the public; and for lack of a reasonable guard the innkeeper

³ *Bonner v. Welborn*, 7 Ga. 296 (1849); *Kisten v. Hildebrand*, 9 B. Mon. (Ky.) 72, 48 Am. Dec. 416 (1848); *Southwood v. Myers*, 3 Bush (Ky.), 681 (1868).

⁴ *Manning v. Wells*, 9 Humph. (Tenn.) 746, 51 Am. Dec. 688 (1859).

⁵ *Bonner v. Welborn*, 7 Ga. 296 (1849); *Carpenter v. Taylor*, 1 Hilton (N. Y.), 193 (1856).

⁶ *White v. Holman*, 44 Or. 180, 74 Pac. 933 (1904); *ante*, § 41.

⁷ *Siegman v. Keeler*, 4 N. Y. Misc. 528, 24 N. Y. Supp. 821 (1893); *Smith v. Read*, 54 How. Pr. (N. Y.) 14, 6 Daly, 33 (1875).

would doubtless be held negligent, even toward a boarder.⁸ But the boarding house is not open to the world; strangers are not freely permitted to enter its outside door, and the boarding-house keeper is therefore not to be held negligent if the boarder's goods are stolen from his room, even though it is done by thieves from outside. If, however, the boarding-house keeper or his servant knowingly permits a stranger to enter a boarder's room, the act is negligent and the housekeeper is liable if the stranger steals goods from the room.⁹

§ 293. Responsibility for negligence of servant.

In an English case the responsibility of the boarding-house keeper was much discussed. The goods of a boarder, who was about to leave the house, were in the hall when they were stolen by a thief who entered through the outside door, negligently left open by a servant of the housekeeper. The judge charged that if the housekeeper was not personally negligent the boarder could not recover. On a rule for a new trial the court of Queen's Bench was equally divided.¹⁰ There can be no doubt that the charge was erroneous. Erle, J., supported it on the ground that "there is no delivery of the goods of the plaintiff to the defendant; there is no contract by the defendant to keep them with care and deliver them again; there is no reward in respect of goods, the terms being the same for a boarder whether with or without goods; there is no duty of keeping owing from defendant to plaintiff, and consequently no measure by which to try whether any given act, such as leaving a door open, is actionable negligence contrary to that duty. The goods of the plaintiff in this case remained in her possession and under her control, and were disposed of by her as she chose, without notifying what she had done to the defendant. The bailee for reward has possession, and can apply

⁸ This seems to have been assumed in *Dansey v. Richardson*, 3 E. & B. 143 (Eng. 1854), and in *Siegman v. Keeler*, 4 N. Y. Misc. 528, 24 N. Y. Supp. 821 (1893).

⁹ *Smith v. Read*, 54 How. Pr. (N. Y.) 14, 6 Daly, 33 (1875).

¹⁰ *Dansey v. Richardson*, 3 E. & B. 143 (Eng. 1854).

care to guard, and undertakes to do so; the defendant had no possession and could apply no care to goods which she knew not of." "The defendant's duty was performed, if she took such care of the house and things in it as a prudent owner would take. . . . The door might be left open in the manner alleged by a servant without any want of any degree of care on the mistress's part, seeing that the owner of a house cannot always be at the front door; and when he is absent the fact may occur notwithstanding every precaution on his part to prevent it."

These arguments were fully answered by Coleridge, J.: "Whether I am staying at an inn or a boarding house, there is ordinarily neither more nor less of an express bailment of my goods to the master of the house; in both cases the custody of the goods, such as it is, is incident to myself being there as guest; and this is in consideration of a valuable reward. . . . There may be no express or independent bailment . . . and yet there may be a liability where they sustain damage or are lost by the misconduct or negligence of the boarding-house keeper;" and by Lord Campbell, C. J.: "There is a duty on his part, analogous to that incumbent on every prudent householder to keep the outer door of the house shut at times when there is danger that thieves may enter and steal the goods of the guests. If he employs servants to perform this duty, while they are performing it they are acting within the scope of their employment, and he is answerable for their negligence. . . . Wherever a loss of the thing bailed arises from a want of the degree of care which from the nature of the bailment ought to be exercised, I think it immaterial whether the negligence be imputable personally to the bailee, or to servants employed by him. . . . The only duty in this case arose out of the relation of boarding-house keeper and guest; but I think there might have been a breach of that duty under the circumstances alleged and proved, without proof of personal misconduct on the part of the defendant."

The correctness of the last opinion is clear, and the boarding-

house keeper, like every other master, is responsible for the negligence of his servant in the course of his employment.¹¹

§ 294. Nature of care required.

The analysis by Coleridge, J., of the obligation of the keeper of a boarding house is valuable.

"If the defendant here had neglected to give the plaintiff a dry bed, or wholesome food, and the plaintiff had become sick in consequence, if the defendant had by negligence lost the boots or shoes, or any articles of the plaintiff's dress which in the course of attendance on her she had taken to clean it cannot be doubted that she would have been liable to make recompense in damages. . . .

"When indeed we speak of taking the same care of the guest's goods as a prudent owner would take care of his own, we do not speak of a habit or character generally, but we apply it to the particular instance upon which the question arises in judgment. Occasional carelessness of conduct is consistent with general carefulness of character, though it is not commonly found with it. A man, therefore, may be a prudent owner, and yet not in every instance take good care of his own property."

§ 295. Care in the admission of persons as boarders.

In *Siegman v. Keeler* ¹² a boarder sued the keeper of the boarding house to recover the value of goods stolen from his room. He alleged negligence in three particulars: that the street door was in an insecure condition; that the housekeeper did not keep the boarder's room locked during his absence; and that she did not at once eject a boarder who on one or two occasions had come home late at night and left the street door ajar. As to the first ground, it was found untrue in fact; it seemed to be conceded that it would have been negligence knowingly to leave the street door insecurely fastened. As to

¹¹ *Smith v. Read*, 54 How. Pr. (N. Y.) 14, 6 Daly, 33 (1875).

¹² 4 N. Y. Misc. 528, 24 N. Y. Supp. 821 (1893).

the second ground, the court said that "in the absence of proof to the contrary, we must assume that defendant exercised at least ordinary care in the admission of persons as patrons of her house or otherwise, refusing admission to such as were known to be of ill repute, vicious inclinations or habits, by which the persons or goods of others were endangered. Having done so, she was not to be considered as an insurer against acts of imprudence or dishonesty on the part of persons admitted, and it most certainly would have been an exhibition of extraordinary vigilance if, under such circumstances, defendant had kept every room, nook, and cranny of her house securely locked and bolted against possible marauders from within." The correctness of this view must be conceded. The boarding-house keeper is under a duty to admit no dangerous person knowingly as a guest, and to exercise some reasonable scrutiny as to the character of the inmates. That done, he is not responsible, without actual negligence, for a theft by one boarder from another.

As to the third point, the court said :

"Lastly, we are unable to persuade ourselves that with like care in the choice of her patrons it was even slight negligence on the part of defendant that she did not rid her house of a patron who had once, or even twice, relaxed the exercise of ordinary caution to securely close the front door after his ingress late at night. It would involve the severest strain to construe this circumstance into omission by defendant to use ordinary care to protect her patrons' effects. Occasional omissions of precaution of merely prudential suggestion, however induced, are not of infrequent occurrence. We do not believe ourselves at fault if we assume that they have happened to most, if not to all, persons, and that they will happen again and again, and because of that fact the frailty of human foresight in that respect may be said to fairly enter into the consideration of our daily affairs, and so that plaintiff and his brother may be deemed to have entered defendant's house subject to the risk of such occurrences. If it was negligence for defend-

ant to continue to harbor an offender upon discovery of his transgressions, it would have been equally so for another to have afforded him shelter with knowledge of his fault; and the logical sequence of respondent's contention would be that the occasional lapses of defendant's convivial boarder should have been visited with punishment so severe that he would be from henceforth and forever compelled to be 'a wanderer on the face of the earth.' Of course, a vastly different aspect of the matter would have been presented had it appeared in evidence that defendant continued to harbor a patron who was habitually remiss in his attention to matters of common prudence, and whose conduct thus tended to expose the persons and goods of other patrons to needless risk."

The boarding-house keeper, the court also said, must exercise a reasonable degree of care for the safety of his guests and their goods. "If it be shown that the goods have been lost, destroyed or stolen, he is not answerable for their value, unless it further appears that with due care on the part of the bailee the loss, destruction, or theft would have been averted.¹³ The burden of proof in such a case is, as in other instances of imputed negligence, upon him who asserts the want of due care, the presumption always being that a person has performed a duty required of him. . . . Ordinary care is that degree of care which constitutes the average of common prudence, and would have been employed by most persons under the same circumstances,¹⁴ and in the case of a boarding-house keeper may properly include the exercise of a reasonable degree of discrimination in the admission and maintenance of persons as patrons of his establishment. A boarding-house keeper, furthermore, is, in the absence of an agreement to the contrary, in contemplation of law, a custodian of his patron's goods.¹⁵ The former thus becomes a bailee of the latter's goods. The

¹³ Citing *Clafin v. Meyer*, 75 N. Y. 260; *Leoncini v. Post*, 13 N. Y. Supp. 825.

¹⁴ Citing *Ernst v. R. R.*, 35 N. Y. 9, 26.

¹⁵ Citing *Ingallsbee v. Wood*, 36 Barb. 452.

relation of the parties creates a bailment for mutual benefit, which imposes upon the bailee a duty to exercise ordinary care to protect the goods intrusted to him against loss by theft or otherwise, and subjects him to responsibility for ordinary negligence; that is to say, for the omission to exercise ordinary care."

§ 296. Contributory negligence of the boarder.

As in the case of an inn, so in the case of a boarding house, the contributory negligence of the boarder may bar his action against the housekeeper for loss of goods. Thus, in a case where goods were stolen from the boarder's room he was held barred from recovery on account of his contributory negligence in leaving his door unlocked;¹⁶ and though this might be questionable in the case of an inn,¹⁷ it seems undoubtedly correct in the case of an ordinary boarding house. In an inn there are usually servants employed to guard the corridors and keep out suspicious intruders; but in an ordinary boarding house no such watchfulness can be expected of the keeper, and it is therefore incumbent upon the boarder to exercise care over his goods by locking his door.

§ 297. Special undertaking of the boarding-house keeper.

Of course the common-law liability of the boarding-house keeper may be modified or the extent of care required of him be enlarged by an express agreement or by the special circumstances of the case. This was well brought out by the case of *Scarborough v. Cosgrove*.¹⁸ The plaintiff was a boarder in the defendant's house. He informed the defendant that he had property which he wished to keep under lock and key, and asked for a key of the bedroom door. He was told that a second key could not be supplied, that he must remove the key and leave it with the defendant as it was required for the

¹⁶ *Buddenburg v. Benner*, 1 *Hilton* (N. Y.), 84 (1856).

¹⁷ *Ante*, § 224.

¹⁸ [1905] 2 K. B. 805.

purpose of giving the servants access to the room, and that the room would be quite safe as the people in the house were all known. Valuable goods were stolen from the plaintiff's room by another boarder, who had been admitted to the house without references or inquiry about him, and who turned out to be a professional thief. It was held by the Court of Appeal that under the special circumstances there was evidence from which a jury might find such lack of reasonable care as would make the defendant liable for the loss. The Lord Justice Romer said: "Seeing that the landlord carries on his business of a boarding-house keeper for a reward, I think he is bound to carry on that business with reasonable care, having regard to the nature and normal conduct of the business as known to the guest, or as represented to the guest by him; and if by reason of a breach of that duty on his part the luggage is lost I can see no reason why he should not be held liable for the loss to the guest." Stress was laid on the fact that an improper person had been admitted to the house, contrary to the defendant's representations. "One of the considerations which has pressed on me is that, on the evidence as it stands, unanswered at present by the defendant, the business appears to have been represented by the defendant to the plaintiffs as one where the guests staying in the house were known to the defendant, and where, consequently, there was comparatively little risk in the system adopted by the defendant in the management of the business as to only one key being kept both for the purposes of the guest and the purposes of the defendant's servants: whereas it now appears from the evidence, as it at present stands, that the defendant admitted the guest who stole the plaintiff's chattels without any knowledge of him, and without any references or introduction, or inquiry as to his respectability."

§ 298. Boarding-house keeper's lien.

A boarding-house keeper is often given by statute a lien on his guest's goods for board. This statute does not apply to a

mere private housekeeper who incidentally receives a person to board, but only to one who makes a business of keeping a boarding house;¹⁹ but to such person it gives the same lien upon the effects of his boarder for his charges which an inn-keeper has at common law upon the goods of his guest for the price of his board and lodging.²⁰ The lien covers only charges for board and lodging actually furnished to the boarder; it does not cover a charge for keeping a horse,²¹ nor does it secure damages due for breach of a contract to remain as a boarder.²² It exists upon the goods of a transient as well as of a permanent boarder.²³

The statutory lien extends only to goods of the boarder, and not to goods of a third person brought to the house by the boarder.²⁴ This is true even if the owner of the goods is responsible for the board bill. Thus, where a man drove his wife and child from home by his cruelty and neglect, and they went to a boarding house under such circumstances that he was liable for their board, taking with them certain furniture and wearing apparel belonging to the man, it was held that the boarding-house keeper had no lien on the goods.²⁵

On the other hand, there is no lien on the goods of the boarder where the credit for the board bill is actually extended to another. Thus, where a husband engaged board for his wife and became responsible for the board bill, no lien could be enforced against the wife's goods.²⁶

The lien attaches to the goods when the charge is incurred,

¹⁹ *Cady v. McElwell*, 1 Lans. (N. Y.) 484 (1869).

²⁰ *Nichols v. Halliday*, 27 Wis. 406 (1871).

²¹ *Cross v. Wilkins*, 43 N. H. 332 (1861).

²² *Shafer v. Guest*, 6 Rob. (N. Y.) 264, 35 How. Pr. 184 (1868).

²³ *Stewart v. McCready*, 24 How. Pr. (N. Y.) 62 (1861).

²⁴ *Mills v. Shirley*, 110 Mass. 158 (1872); *Misch v. O'Hara*, 9 Daly (N. Y.), 361 (1880); *Barnett v. Walker*, 39 N. Y. Misc. 323, 79 N. Y. Supp. 859 (1902). (See under earlier statute, however, *Jones v. Morrill*, 52 Barb. (N. Y. 1864), 623; *Newcombe v. Anderson*, 11 Ont. 665 (1886); *ante*, § 265.

²⁵ *Mills v. Shirley*, 110 Mass. 158 (1872).

²⁶ *McIlvane v. Hilton*, 7 Hun (N. Y.), 594 (1876); *ante*, § 264.

though the time for payment has not yet arrived,²⁷ and continues to bind the goods wherever they are carried, even though they be taken into another State.²⁸

²⁷ *Smith v. Colcord*, 115 Mass. 70 (1874).

²⁸ *Jaquith v. American Express Co.*, 60 N. H. 61 (1880).

CHAPTER XXIV.

THE RESTAURANT.

§ 301. Difference between restaurant and inn.	§ 304. Responsibility on a bailment.
302. Duty of keeper of restaurant to customer personally.	305. Responsibility on an implied bailment.
303. Responsibility for the goods of customer.	306. Responsibility for defect of watchfulness.

§ 301. Difference between restaurant and inn.

The restaurant is a house for the entertainment of anyone, whether resident or traveller; and the entertainment furnished is food and drink, without lodging. It differs in this respect from inn and boarding house, which furnish lodging as well as food.¹ An innkeeper may carry on, under the same roof, a restaurant, to which he invites all persons to come for food and drink only.²

§ 302. Duty of keeper of restaurant to customer personally.

The restaurant keeper is not an insurer of the quality of the food he furnishes, but he is liable for knowingly or negligently furnishing bad and deleterious food.³ He is also responsible for the conduct of his servants towards his customers. He is liable if a waiter negligently spills a glass of water on a customer's dress.⁴

¹ *Sheffer v. Willoughby*, 163 Ill. 518, 45 N. E. 253, 34 L. R. A. 464 (1896); *Block v. Sherry*, 43 N. Y. Misc. 342, 87 N. Y. Supp. 160 (1904); *Carpenter v. Taylor*, 1 Hilton (N. Y.), 193 (1856); *Dunn v. Bean*, Quebec Rep. 11 Super. Ct. 538 (1897).

² *Regina v. Rymer*, 2 Q. B. D. 136, 46 L. J. M. C. 108 (1877).

³ *Sheffer v. Willoughby*, 163 Ill. 518, 45 N. E. 253, 34 L. R. A. 464 (1896).

⁴ *Block v. Sherry*, 43 N. Y. Misc. 342, 87 N. Y. Supp. 160 (1904).

The keeper must also take care to secure the safety of his customer against defects of the building itself. Thus, where a person taking a meal in the defendant's restaurant, situated on the "Iron Pier" at Rockaway Beach, was injured by the collapse of the pier, she was held entitled to compensation. "The plaintiff was upon this platform for the purpose of eating a meal. She was there because the defendant impliedly stated to her that the place was safe for that purpose and it was the duty of the defendant to have the premises in a reasonably safe condition. The platform fell, the plaintiff was injured, and, the defendant having failed to show a condition of facts establishing a reasonable degree of care to make the premises what he had held them out to be, he was properly chargeable with liability for the injuries sustained."⁵

§ 303. Responsibility for the goods of customer.

The responsibility of the restaurant keeper for the goods of the customer brought by him into the restaurant has been much discussed. It is certain that at common law he does not have under any circumstances the extraordinary liability of an innkeeper;⁶ though in the Province of Quebec, where the innkeeper is responsible only for due care, and is liable only for a loss caused by his negligence, the restaurant keeper is said to be under the same responsibility as an innkeeper.⁷

The liability of the restaurant keeper may be rested upon either one of the three following grounds:

§ 304. Responsibility on a bailment.

By the custom of the restaurant, the guest's coat and hat may be taken by a servant at the entrance to the restaurant. In that case there is an express bailment to the restaurant keeper, and the bailment is for hire, or, as it is sometimes put, for the mutual benefit of bailor and bailee. For though there

⁵ *Schnitzer v. Phillips*, 95 N. Y. Supp. 478 (1905), per Woodward, J.

⁶ *Simpson v. Rourke*, 13 N. Y. Misc. 230, 34 N. Y. Supp. 11 (1895).

⁷ *Dunn v. Bean*, Quebec R. 11 S. C. 538 (1897).

is nothing specially paid to the restaurant keeper for taking charge of the goods, still it is done as a business matter: "for such a system might obviously add to the popularity of the establishment, and would probably be adopted with that very object in view."⁸ The restaurant keeper in such a case is therefore liable for any loss caused by his neglect of reasonable care.⁹

The same principle is involved where the waiter takes the guest's coat and hat and hangs them on a hook when the guest sits at the table; then, too, there is held to be a bailment for mutual benefit, so that the restaurant keeper is liable for a loss which happens by reason of his negligence.¹⁰

§ 305. Responsibility on an implied bailment.

In the second place, an "implied bailment" may be established by less direct proof of delivery to the servant of the restaurant keeper; as, for instance, by evidence that an overcoat was necessarily laid aside under circumstances showing at least notice of the fact and of such necessity to the restaurant keeper or his servants.¹¹

If there is a bailment the restaurant keeper is responsible for a loss caused by his negligence, even though the words "not responsible for hats and coats" were printed on the bill of fare, and the waiters were forbidden to take hats and coats. The customer could be affected by a rule of this sort only if it was properly published so as to be called to his attention.¹²

⁸ Charles, J., in *Ultzen v. Nicol*, (1894) 1 Q. B. 92, 63 L. J. Q. B. 289, 10 Rep. 13, 70 L. T. 140, 40 W. R. 58, 58 J. P. 103 (Eng.).

⁹ *La Salle Restaurant & Oyster House v. McMasters*, 85 Ill. App. 677 (1899); *Buttman v. Dennett*, 9 N. Y. Misc. 462, 30 N. Y. Supp. 247 (1894).

¹⁰ *Ultzen v. Nicol*, (1894) 1 Q. B. 92, 63 L. J. Q. B. 289, 10 Rep. 13, 70 L. T. 140, 42 W. R. 58, 58 J. P. 103 (Eng.); *Appleton v. Welch*, 20 N. Y. Misc. 343, 45 N. Y. Supp. 751 (1897).

¹¹ *Montgomery v. Ladjing*, 30 N. Y. Misc. 92, 61 N. Y. Supp. 840 (1899).

¹² *La Salle Restaurant & Oyster House v. McMasters*, 85 Ill. App. 677 (1899).

§ 306. Responsibility for defect of watchfulness.

Finally, the restaurant keeper, though not a bailee in any sense, may be held responsible for loss of the goods of his guest if the loss happened by reason of the insufficiency of the general supervision exercised by the keeper of the restaurant for the protection of his customer's goods; and the burden of proving neglect of duty is on the plaintiff.¹³ The kind and amount of supervision required of the restaurant keeper, and the question of his neglect of due care, depend of course upon the special circumstances of each case. "It is well known that there are all kinds of restaurants. In some of them good taste and etiquette require that a customer should take his hat and overcoat off while taking a meal, while in others, especially the so-called 'quick lunch' establishments, customers frequently remove neither hat nor overcoat."¹⁴ And where sufficient general supervision is exercised by the restaurant keeper, he is not liable when the guest himself hangs his overcoat on a hook, without calling the waiter's attention to it, and it is stolen from the hook.¹⁵

¹³ *Montgomery v. Ladjing*, 30 N. Y. Misc. 92, 61 N. Y. Supp. 840 (1899); *Harris v. Childs' Unique Dairy Co.*, 84 N. Y. Supp. 260 (1903); *Simpson v. Rourke*, 13 N. Y. Misc. 230, 34 N. Y. Supp. 11 (1895).

¹⁴ *Freedman, P. J.*, in *Montgomery v. Ladjing*, *supra*.

¹⁵ *Simpson v. Rourke*, 13 N. Y. Misc. 230, 34 N. Y. Supp. 11 (1895); *Montgomery v. Ladjing*, 30 N. Y. Misc. 92, 61 N. Y. Supp. 840 (1899); *Harris v. Childs' Unique Dairy Co.*, 84 N. Y. Supp. 260 (1903). In both the last two cases the guest had notice that articles might be deposited with the cashier; but the cases seem to have turned on the absence of a bailment.

CHAPTER XXV.

THE THEATRE.

Topic I. The nature of a theatre.	§ 319. The right of spectators to criticise the entertainment.
§ 311. Definition of a theatre.	320. The right of spectators to applaud or hiss.
312. An opera house is a theatre.	Topic IV. Responsibility of the manager.
Topic II. Admission to the theatre.	321. Responsibility of the manager for the personal safety of the spectator.
313. The manager may fix prices as he pleases.	322. Responsibility of the manager for the safety of the premises.
314. The manager may admit whom he pleases.	323. Contributory negligence of the injured party.
315. Ticket for entrance to a theatre is a mere license.	324. Responsibility of the manager for the goods of the spectator.
316. Ticket is also a contract not to revoke license.	Topic V. Licenses.
317. How far a ticket is transferable.	325. The requirement of a license.
318. Accommodations secured by the ticket.	
Topic III. Rights of spectators.	

Topic I. *The Nature of a Theatre.*

§ 311. Definition of a theatre.

A theatre is a house in which a story is represented by human action upon a stage.¹ Though the stage is usually supplied with appropriate scenery and with machinery for producing certain spectacular effects, this is not essential; for both in early times and to-day dramas are performed without scenery. It is not necessary that the words spoken on the stage be com-

¹ *Jacko v. State*, 22 Ala. 73 (1853); *Bell v. Mahn*, 121 Pa. 225, 15 Atl. 523, 6 Am. St. Rep. 786, 1 L. R. A. 364 (1888).

mitted to memory, the dialogue may be impromptu.² Nor is it even necessary that there shall be dialogue; a pantomime, or a ballet which represents a consecutive story,³ or a comic song sung in character, with costumes and action,⁴ constitutes a theatrical entertainment, but not mere dancing in costume on the stage⁵ or a mere exhibition on the stage of natural or artificial curiosities.⁶

In an English case it appeared that a room contained a stage, footlights, scenery, etc.; that only two living characters appeared on the stage, one of whom took no important part in the performance, and that a drama was carried on, but the action, speaking and dancing of all the characters except those mentioned took place in a room below the stage, and were so reflected upon the stage by mirrors, etc., as to seem to the spectators to be taking place there. On the ground that two actors were actually performing their parts on the stage, this was held to be a "stage play," in the language of the act; but the court was uncertain whether the performance of the actors in the room below could be described by that term.⁷ This doubt was probably caused by the peculiar term used in the act; a house for such a performance would be a theatre.

§ 312. An opera house is a theatre.

An early case, not much considered, held that an opera house was not a theatre; the distinction being drawn between a drama, which is spoken or recited, and an opera, which is sung.⁸ But this case was afterwards overruled, and an opera held to be a theatrical exhibition.⁹ In the course of his opinion Judge Clark

² *Society for the Reformation, etc., v. Diers*, 10 Abb. Pr. N. S. (N. Y.) 216 (1871).

³ *Wigan v. Strange*, L. R. 1 C. P. 175 (1865).

⁴ *Gartenstein's License*, 15 Pa. Co. Ct. 612, 4 Pa. Dist. Rep. 37 (1894).

⁵ *Wigan v. Strange*, L. R. 1 C. P. 175 (1865).

⁶ *New Orleans v. North*, 12 La. Ann. 205 (1857).

⁷ *Day v. Simpson*, 18 C. B. N. S. 680 (1865).

⁸ *Rowland v. Kleber*, 1 Pittsb. (Pa.) 68 (1853).

⁹ *Bell v. Mahn*, 121 Pa. 225, 15 Atl. 523, 6 Am. St. Rep. 786, 1 L. R. A. 364 (1888).

said: "A drama is a story represented by action. The representation is as if the real persons were introduced and employed in the action itself. It is ordinarily designed to be spoken, but it may be represented in pantomime, when the actors use gesticulation, sometimes in the form of the ballet, but do not speak; or in opera, where music takes the place of poetry and of ordinary speech, and the dramatic treatment is essentially different from either. An 'opera' is defined: 'A musical drama, consisting of airs, choruses, recitations, etc., enriched with magnificent scenery, machinery, and other decorations, and representing some passionate action.' (Webster.) The spoken drama, therefore, and the opera, agree in the method or manner which is essential to the dramatic art, viz: imitation in the way of action. In the former, it is true, the actor observes the rules of rhetoric and of oratory, and follows the special laws of dramatic delivery; while in the latter he employs the power of music, both vocal and instrumental, as a medium of artistic and passionate expression,—music, however, which is not arranged with reference mainly to its melodic interest, but in such form as to express, not only the words, but the thoughts, emotions and passions of the mind, such as joy, grief, hope, despair, etc., which the idea or conception of the play may involve. The word setting, the orchestrazation, the musical intervals, and the composition generally, are all arranged to serve the exigency of the passing sentiment, and to turn the subject of the story into the action of the play. In short, the opera is composed with special reference to the declamatory power of music. . . .

"The opera is essentially and in every point of view a dramatic composition, and its representation a dramatic exhibition. It is a matter of common knowledge that some of the most famous dramatic characters of modern times have developed their exquisite powers upon the operatic stage. It may, of course, be conceded that music is in some sense an essential element in the opera. In this respect it is distinguished from the spoken drama, but the fundamental and really essential

element of both is action. The opera house and the theatre alike comprehend the stage, proscenium boxes, orchestra, pit or parquet, and the galleries. The scènic representation is of the same general character, and the stage machinery and decorations of the same order. The ordinary theatre is adapted to the performance of the opera, and it is well known that this form of exhibition, especially of the light opera and the opera comique, rendered 'partly in song and partly in dialogue,' forms in these days a prominent feature of theatre work."

Topic II. *Admission to the Theatre.*

§ 313. The manager may fix prices as he pleases.

The manager of a theatre is not engaged in a public employment, and he may therefore conduct his business as he pleases; and he may therefore fix prices without regard to the question whether they are reasonable. In a case where it was attempted to justify a tumult in a theatre on the ground that the spectators were justly incensed by a raising of the prices, Sir James Mansfield said: "Theatres are not absolute necessities of life, and any person may stay away who does not approve of the manner in which they are managed. If the prices of admission are unreasonable, the evil will cure itself. People will not go, and the proprietors will be ruined unless they lower their demands. But the proprietors of a theatre have a right to manage their property in their own way, and to fix what prices of admission they think most for their own advantage."¹⁰ The theatre, as was well said in a New York case, "is in no sense a public enterprise, and is consequently not governed by the same rules which relate to common carriers or other public institutions of a like character."¹¹

§ 314. The manager may admit whom he pleases.

The manager of a theatre may admit or exclude from his theatre anyone he pleases; no one has a right to demand ad-

¹⁰ Clifford v. Brandon, 2 Camp. (Eng.) 358, 368 (1809).

¹¹ Monell, J., in Purcell v. Daly, 19 Abb. N. C. (N. Y.) 301, 303 (1886).

mittance. "Should anyone apply at the box office of a theatre and desire to purchase tickets of admission and be refused, there can be no question that he would have no cause of action against the proprietor of the theatre for such refusal." ¹² Even the public advertisement of a sale of tickets for a performance is not an offer, which is accepted by the purchaser tendering his money at the box office. The offer for a contract is made by the person desiring to buy a ticket when he tenders his money, and the ticket seller may legally refuse to sell him a ticket.¹³

§315. Ticket for entrance to a theatre a mere license.

A ticket for entrance to a theatre is a mere license, not an interest in land;¹⁴ and not being coupled with an interest it may be revoked at any time, either before or after entrance to the theatre.¹⁵ If after such revocation the purchaser persists in staying in the theatre, or in attempting to enter it, he may be excluded by the use of such force as is necessary for the purpose.¹⁶ And being a mere license, a ticket does not bind an assignee or lessee of the person issuing it.¹⁷

§316. Ticket is also a contract not to revoke license.

But though a ticket is a mere license, so far as any right to enter the building is concerned, it is also a contract with the holder of it to permit him to enter and see the play. A revo-

¹² Monell, J., in *Purcell v. Daly*, 19 Abb. N. C. 301, 303 (1886).

¹³ *Pearce v. Spalding*, 12 Mo. App. 141 (1882).

¹⁴ *Taylor v. Waters*, 7 Taunt. (Eng.) 374 (1817); *Wood v. Leadbitter*, 13 M. & W. (Eng.) 838 (1845); *McCrea v. Marsh*, 12 Gray (Mass.), 211, 71 Am. Dec. 745 (1858); *Burton v. Scherpf*, 1 Allen (Mass.), 133, 79 Am. Dec. 717 (1861); *Purcell v. Daly*, 19 Abb. N. C. (N. Y.) 301 (1886); *Collister v. Hayman*, 71 App. Div. 316, 75 N. Y. Supp. 1102 (1902).

¹⁵ *Wood v. Leadbitter*, 13 M. & W. (Eng.) 838 (1845), overruling on this point *Taylor v. Waters*, 7 Taunt. (Eng.) 374 (1817).

¹⁶ *McCrea v. Marsh*, 12 Gray (Mass.), 211, 71 Am. Dec. 745 (1858); *Burton v. Scherpf*, 1 Allen (Mass.), 133, 79 Am. Dec. 717 (1861); *Purcell v. Daly*, 19 Abb. N. C. (N. Y.) 301 (1886); (but see *Smith v. Leo*, 92 Hun [N. Y.], 242, 36 N. Y. Supp. 949 [1895]); *Collister v. Hayman*, 71 N. Y. App. Div. 316, 75 N. Y. Supp. 1102 (1902, *semble*).

¹⁷ *Coleman v. Foster*, 1 H. & N. (Eng.) 37 (1856).

cation of the license, therefore, while not a tort, is a breach of the contract contained in the ticket; and though the person who presents the ticket has no right to remain on the premises, he may sue for breach of the contract, and recover not only the price of admission but also any incidental expenses to which he may have been put.¹⁸

The damages for illegal expulsion from a place of amusement of one who is rightfully in includes not merely the amount paid for admission, but also compensation for the indignity and disgrace, and any other damage actually suffered as a result of the expulsion,¹⁹ but not exemplary damages, in the ordinary case.²⁰

There is a tendency in some courts to deny that a ticket is a mere revocable license, but in such a case the court usually decides only that an action lies; and the real nature of the action is for breach of contract by revoking the license contrary to the terms of the agreement. Thus, in *Drew v. Peer*²¹ where a ticket holder was ejected from the lobby of the theatre he was held entitled to damages; and Judge Sterrett said: "Whether the tickets conferred merely a license or something more is immaterial. If they gave only a license to enter the theatre and remain there during the performance it is very clear that the agent of the defendant had no right to revoke it as they did, and summarily eject Peer and his wife from the building in such manner as to injure her. We incline to the opinion, however, that as purchasers and holders of tickets for particular seats they had more than a mere license. Their right was more in the nature of a lease, entitling them to peaceable ingress and egress, and exclusive possession of the designated seats during the performance on that particular evening."

¹⁸ *Burton v. Scherpf*, 1 Allen (Mass.), 133, 79 Am. Dec. 717 (1861); *Purcell v. Daly*, 19 Abb. N. C. (N. Y.) 301 (1886).

¹⁹ *Smith v. Leo*, 92 Hun (N. Y.), 242, 36 N. Y. Supp. 949 (1895).

²⁰ *McGowan v. Duff*, 14 Daly (N. Y.), 315 (1887).

²¹ 93 Pa. 234 (1880).

§ 317. How far a ticket is transferable.

A ticket is in its nature transferable, and capable of being used by the holder; but the power of transferring it may be denied by special terms in the ticket itself,²² and the manager may by notice, publicly posted and printed on the ticket, refuse to accept it if bought from an unauthorized person, for instance, a scalper.²³

§ 318. Accommodations secured by the ticket.

The purchaser of a ticket has no right to any other accommodation than that given him by the ticket. Thus, though there is no room left in the pit, a purchaser of a ticket for the pit cannot enter an empty box.²⁴

A regulation adopted in several States, however, gives the purchaser of an admission ticket the right to any seat not sold when the doors open.²⁵ Such a regulation was however held unreasonable and void in one case.²⁶

*Topic. III. Rights of Spectators.***§ 319. The right of spectators to criticise the entertainment.**

An entertainment publicly given invites and justifies public criticism of its merits; but the criticism must be fair. In a suit for libel against a newspaper for an unfair comment upon a play, Lord Kenyon charged the jury that the editor of a public newspaper may fairly and candidly comment on any public entertainment, but it must be done fairly and without malice or view to injure or prejudice the proprietor in the eyes of the public.²⁷

²² *Purcell v. Daly*, 19 Abb. N. C. (N. Y.) 301 (1886).

²³ *Collister v. Hayman*, 71 N. Y. App. Div. 316, 75 N. Y. Supp. 1102 (1902); *Purcell v. Daly*, 19 Abb. N. C. (N. Y.) 301 (1886).

²⁴ *Lewis v. Arnold*, 4 C. & P. (Eng.) 354 (1830).

²⁵ *Cincinnati v. Brill*, 7 Ohio N. P. 534, 5 Oh. S. & C. P. Dec. 566 (1900); *Commonwealth v. Powell*, 10 Phila. (Pa.) 180, 30 Leg. Int. 100 (1873).

²⁶ *District of Columbia v. Saville*, 1 McArthur (Dist. Col.), 581, 29 Am. Rep. 616 (1874).

²⁷ *Dibdin v. Swan*, 1 Esp. (Eng.) 28 (1793).

§ 320. The right of spectators to applaud or hiss.

The right of the spectators to give loud and vigorous expression to their approbation or disapprobation was much discussed at the beginning of the last century, when such conduct was common. In *Clifford v. Brandon* ²⁸ the plaintiff, who sued for false imprisonment, had been arrested for taking part in a riot in the Covent Garden Theatre. The spectators, being incensed at the act of the manager in raising prices, made such a noise in the theatre that the play could not go on. Sir James Mansfield first directed the jury that the raising of prices was no excuse for the disturbance. He then added: "These premeditated and systematic tumults have been compared to that noise which has been at all times witnessed at theatres in the immediate expression of the feelings of the audience upon a new piece, or the merits or defects of a particular performer. The cases, however, are widely different. The audience have certainly a right to express by applause or hisses the sensations which naturally present themselves at the moment; and nobody has ever hindered, or would ever question, the exercise of that right. But if any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a conspiracy, and that the persons concerned in it might be brought to punishment."

As time went on, and the ordinary manners of an audience became less boisterous, it came to be recognized that signs of disapprobation must at any rate be confined to peaceful acts. Thus, in a case where the defendants were informed against for a conspiracy to create a riot, and it was alleged that they had gone to a theatre in order to cry down an actor whom they did not like, Chief Justice Bushe charged the jury as follows: "The rights of an audience at a theatre are perfectly well defined. They may cry down a play or other performance which they dislike, or they may hiss or hoot the actors who depend upon their approbation or their caprice. Even that privilege, how-

²⁸ 2 Camp. (Eng.) 358 (1809).

ever, is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, although it may be noisy, must not be riotous. That censure or approbation must be the expression of the feelings of the moment, for if it be premeditated by a number of persons confederated beforehand to cry down a performance or even an actor, it becomes criminal. Such are the limits of the privileges of an audience, even as to actors and authors.”²⁹

The same principle was expressed more clearly and concisely later by Chief Justice Tindal in *Gregory v. Duke of Brunswick*:³⁰ “The public who go to a theatre have the right to express their free and unbiased opinions of the merits of the performers who appear upon the stage; but have no right to go to the theatre by a preconcerted plan to make such a noise that an actor, without any judgment being formed on his performance, should be driven from the stage by such a scheme.”

At the present day the rights of those who go to the theatre to see the play, rather than to express their opinion of it, would no doubt be recognized; and expressions of opinion must be limited to such acts as would not interfere with the comfortable hearing of the play by others.

Topic IV. *Responsibility of the Manager.*

§ 321. Responsibility of the manager for the personal safety of the spectator.

The manager of the theatre must protect his patrons from any personal danger from the performance, so far as such danger can be foreseen and guarded against. So where the plaintiff, while watching a shooting entertainment given by the defendant, was injured by being hit in the eye by a metallic piece which flew from the target when the bullet hit it, the jury was allowed to find a verdict for the plaintiff if the de-

²⁹ *Rex v. Forbes*, 1 *Craw. & Dix (Ire.)* 157 (1823).

³⁰ 1 *Car. & K. (Eng.)* 24, 31 (1843).

fendant could have foreseen and by due care guarded against the danger.³¹

The manager is responsible for an assault on a patron by his servant, acting in the course of his employment; as by a door-keeper in the effort illegally to eject a patron.³² And the duty of the manager to protect the spectator probably goes further. He must provide servants to protect him against violence which can be prevented; and he is therefore responsible for any violence inflicted from whatever cause by such servant.³³ As Judge Howard said in *Dickson v. Waldron*:³⁴

"The treatment due from a carrier to his passenger, from an innkeeper to his guest, and from a theatrical manager to his patron, while perhaps differing in degree, is similar in kind. . . . Common carriers, innkeepers, merchants, managers of theatres, and others who invite the public to become their patrons and guests, and thus submit personal safety and comfort to their keeping, owe a more special duty to those who may accept such invitation. Such patrons and guests have a right to ask that they shall be protected from injury while present on such invitation, and particularly that they shall not suffer wrong from the agents and servants of those who have invited them."

In accordance with this doctrine, the manager of an entertainment was held responsible to one of the persons present who was injured by a drunken man, when the manager had sold liquor to the latter with knowledge of his quarrelsome propensity when drunk.³⁵

³¹ *Thompson v. Lowell, L. & H. St. Ry.*, 170 Mass. 577, 49 N. E. 913, 64 Am. St. Rep. 323, 40 L. R. A. 345 (1898). So in a case where a spectator was hit by an exploding firecracker. *Herrick v. Wixom*, 121 Mich. 384, 80 N. W. 117, 81 N. W. 333 (1899).

³² *Dickson v. Waldron*, 135 Ind. 507, 34 N. E. 506, 35 N. E. 1 (1893); *Fowler v. Holmes*, 3 N. Y. Supp. 816 (1889).

³³ *Ante*, § 172.

³⁴ 135 Ind. 507, 34 N. E. 506 (1893).

³⁵ *Mastad v. Swedish Brethren*, 83 Minn. 40, 85 N. W. 913, 85 Am. St. Rep. 446, 53 L. R. A. 803 (1901).

§ 322. Responsibility of the manager for the safety of the premises.

The owner or manager of a theatre or other building in which public performances are held is not an insurer of the safety of the building.³⁶ He is, however, obliged to make the place as little dangerous as such a place can be, having regard to the contrivances necessarily used in carrying on the business; and he is liable for any injury to a patron due to a defect which could have been avoided.³⁷ The fact that the manager employs a competent workman or contractor to construct the building and make it safe will not relieve him from liability if it is constructed improperly, even if he is not in any respect personally negligent; he cannot escape the responsibility for providing a safe building by delegating the duty to another.³⁸

Not only must the premises be properly constructed in the beginning; all reasonable care must be taken to remedy defects which arise during the use of the building. So where the covering of a step on a staircase became loose, and tripped up a spectator who thereby suffered injury, it was held that the manager should have used reasonable diligence in finding and repairing the defect; and that a space of twenty-four hours since

³⁶ *Dunning v. Jacobs*, 15 N. Y. Misc. 85, 36 N. Y. Supp. 453 (1895).

³⁷ *Hart v. Washington Park*, 157 Ill. 9, 41 N. E. 620, 48 Am. St. Rep. 298, 29 L. R. A. 492 (1895); *Williams v. Nat. C. P. Assoc. (Ia.)*, 102 N. W. 783 (1905); *Currier v. Boston Music Hall*, 135 Mass. 414 (1883); *Oxford v. Leathe*, 165 Mass. 254, 43 N. E. 92 (1896); *Schofield v. Wood*, 170 Mass. 415, 49 N. E. 636 (1898); *Sebeck v. P. V. Verein*, 64 N. J. Law, 624, 46 Atl. 631, 81 Am. St. Rep. 512, 50 L. R. A. 199 (1900); *Camp v. Wood*, 76 N. Y. 92, 32 Am. Rep. 282 (1879); *Dunning v. Jacobs*, 15 N. Y. Misc. 85, 36 N. Y. Supp. 453 (1895); *Fox v. Buffalo Park*, 21 N. Y. App. Div. 321, 47 N. Y. Supp. 788 (1897); *Dunn v. Agricultural Society*, 46 Ohio St. 93, 18 N. E. 496, 15 Am. St. Rep. 556, 1 L. R. A. 754 (1888); *Richmond & M. Ry. v. Moore*, 94 Va. 493, 27 S. E. 70, 37 L. R. A. 258 (1897); *Francis v. Cockrell*, L. R. 5 Q. B. 501 (1870).

³⁸ *Currier v. Boston Music Hall*, 135 Mass. 414 (1883); *Sebeck v. P. V. Verein*, 64 N. J. Law, 624, 46 Atl. 631, 81 Am. St. Rep. 512, 50 L. R. A. 199 (1900); *Fox v. Buffalo Park*, 21 N. Y. App. Div. 321, 47 N. Y. Supp. 788 (1897); *Richmond & M. Ry. v. Moore*, 94 Va. 493, 27 S. E. 70, 37 L. R. A. 258 (1897); *Francis v. Cockrell*, L. R. 5 Q. B. 501 (1870).

the covering became loose was a long enough time for the manager to have acted.³⁹

§ 323. Contributory negligence of the injured party.

The injured party may, of course, be barred from recovery by his own contributory negligence;⁴⁰ and what constitutes contributory negligence is a question of fact, to be decided in a doubtful case by the jury.⁴¹ But where the entrance to the building was by a lighted hall and stairway known to the plaintiff, and he left the hall and stepped through an unlocked door, in the dark, upon an unrailed platform from which he fell, the court ordered a verdict for the defendant, and this was sustained; the Supreme Court saying that the injury was so clearly the result of his own negligence that the direction was not error.⁴²

§ 324. Responsibility of the manager for the goods of the spectator.

The proprietor of a theatre is responsible only for the exercise of reasonable care for the protection of his patrons and their goods. He is not an insurer of the goods of a patron. Thus, where a patron hung on a hook in a box occupied by him certain articles of apparel which are usually laid aside when attending a play, and they were stolen during the performance, the keeper of the theatre cannot be held liable in the absence of evidence of negligence.⁴³ In the course of his opinion Judge Bischoff said:

“The manager of a theatre, in the absence of a special agreement, is not, unlike an innkeeper and common carrier of goods, upon which classes of persons the common law, from motives of public policy then prevailing, imposed an extraordinary lia-

³⁹ *Butcher v. Hyde*, 10 N. Y. Misc. 275, 30 N. Y. Supp. 1073 (1894).

⁴⁰ *Johnson v. Willcox*, 135 Pa. 217, 19 Atl. 939 (1890).

⁴¹ *Schofield v. Wood*, 170 Mass. 415, 49 N. E. 636 (1898); *Camp v. Wood*, 76 N. Y. 92, 32 Am. Rep. 282 (1879).

⁴² *Johnson v. Willcox*, 135 Pa. 217, 19 Atl. 939 (1890).

⁴³ *Pattison v. Hammerstein*, 17 N. Y. Misc. 375, 39 N. Y. Supp. 1039 (1896).

bility, an insurer of his patrons' property, though the property may consist of apparel such as is necessarily or usually worn by the patrons and laid aside by them while attending the play. His liability is, at most, that of every person except innkeepers and common carriers of goods, and granting that the manager, with regard to the persons of his patrons and the particular property alluded to, rests under a duty to observe, by himself and his servants, reasonable care to insure safety for the time being, it remains that the record before us is woefully deficient in showing that the eloignment of the plaintiff's overcoat was attributable to neglect on the part of the defendant or any of his servants. Nothing appears to have been committed by the defendant, or any of his servants, that ought to have been left undone. Nothing was omitted that ought to have been performed.

"The defendant, whether he be regarded as a lessor or as a mere licensor, could not reasonably be expected, without a request to that effect, to prevent access by others than the plaintiff's party to their box while the latter were present therein. How was he to know that such others were not friends or acquaintances, or their presence otherwise agreeable to all or some one of the plaintiff's party? Nor could he be reasonably expected to eject persons other than members of the plaintiff's party while none of the latter protested against the presence of such other persons."

In answer to the contention that the placing of hooks for outer garments in the box was in invitation to the occupant to give such garments into the manager's care, the learned judge said:

"There was no invitation to the plaintiff, express or implied, held out by the defendant, that the former should yield his personal vigilance even for a moment. The hooks provided by the defendant were a means of enabling the occupants of the box to care for their apparel with greater ease and comfort to themselves, but an effort to imply from the mere presence of such hooks an assumption by the defendant of the custody

of whatever the occupants of the box might place thereon tortures reason."

Topic V. *Licenses.*

§ 325. The requirement of a license.

The question whether the licensing power may be controlled, or has unlimited discretion, has already been considered. The power to grant a license involves the power to exact a license fee.⁴⁴ It seems that a license need not be contained in a written document, in the ordinary form, but may be by parol;⁴⁵ but a mere statement by the licensing board that they would not grant a license, but should not object to the entertainment so long as it was proper, is not a license.⁴⁶

It does not come within the scope of this chapter to examine at length the licensing acts of the several States, and the interpretations put upon them by the courts. Some of the decisions will be found in the notes.⁴⁷

⁴⁴ *Boston v. Schaffer*, 9 Pick. (Mass.) 415 (1830).

⁴⁵ *Boston v. Schaffer*, 9 Pick. (Mass.) 415 (1830); but see *Simpson v. Wood* 105 Mass. 263 (1870).

⁴⁶ *Simpson v. Wood*, 105 Mass. 263 (1870).

⁴⁷ *Alabama.* Offering a hall for rent to dramatic companies is not carrying on the business of keeping a theatre, at least where it does not appear to have been rented. *Gillman v. State*, 55 Ala. 248 (1876). An exhibition of feats of ledgerdmain is not covered by a license to run a theatre. *Jacko v. State*, 22 Ala. 73 (1853). A public exhibition must be licensed, though it is conducted gratuitously. *Pike v. State*, 35 Ala. 419 (1860; but see *Louisiana*).

Louisiana. A gratuitous exhibition need not be licensed. *State v. Lundie*, 47 La. Ann. 1596, 18 So. 636 (1895; but see *Alabama*). The owner of the building, which is leased and managed by another, need not pay a license. *State v. French Opera Assoc.*, 107 La. 284, 31 So. 630 (1902).

Iowa. A skatingrink is not a "place of public amusement" requiring a license. *Bowlin v. Lyon*, 67 Ia. 536, 56 Am. Rep. 355, 25 N. W. 766 (1885).

Massachusetts. What is a "place of public amusement." See *Commonwealth v. Gee*, 6 Cush. 174 (1830; dancing school is not); *Commonwealth v. Bow*, 177 Mass. 347, 58 N. E. 1017 (1901; merry-go-round is). Where a place of public amusement is conducted gratuitously, it must nevertheless be licensed. *Commonwealth v. Colton*, 8 Gray, 488 (1857).

Minnesota. A license fee of \$125, for six months for theatrical perform-

CHAPTER XXVI.

OTHER PUBLIC HOUSES.

§ 331. Lodging houses.

| § 333. Bath houses.

332. Extent of liability.

§ 331. Lodging houses.

The keeper of a lodging house has even less control and responsibility than the keeper of a boarding house; and it seems clear that he is under no duty to care in any way for the safety of his lodger's goods. His liability was carefully considered and so determined in the case of *Holder v. Soulby*.¹ In the

ances is not unreasonable. *City of Duluth v. Marsh*, 71 Minn. 248, 73 N. W. 962 (1898).

New York. As to what exhibitions must be licensed, see *New York v. Eden Musee*, 102 N. Y. 593, 8 N. E. 40 (1886; concert on stage must be); *People v. Royal*, 23 N. Y. App. Div. 258, 48 N. Y. Supp. 742 (1897; free exhibition of tricks to attract purchasers for goods to be sold need not); *People v. Campbell*, 51 N. Y. App. Div. 565, 65 N. Y. Supp. 114 (1900; piano played in liquor saloon need not).

Pennsylvania. Outside Philadelphia and Pittsburg it is the business, not the house, that is to be licensed. *Commonwealth v. Keeler*, 3 Pa. Dist. R. 158 (1893). If the manager pays the license, this protects all actors playing in his troupe, though the personnel be changed. *Commonwealth v. Reifsnnyder*, 14 Pa. Co. Ct. 353, 3 Pa. Dist. R. 193 (1894). The owner of the building, who is not the manager of the performance, need not take out a license, *Hayes v. Opera House Co.*, 139 Pa. 636, 22 Atl. 647 (1891), but between themselves the parties may agree that the owner of the building shall take out the license, *Gandy v. Oellers*, 39 Wkly. Notes Cas. 438 (1897), and in that case the license protects the manager. *Green v. Kousins*, 3 Pa. Dist. R. 302 (1894). The license must be renewed annually, and one license will cover performances at only one place at once. *Nurdlinger v. Irvine*, 18

¹ 8 C. B. N. S. 254 (Eng. 1860).

course of his opinion in that case Chief Justice Erle said: "The reason why the law makes an innkeeper liable for the loss of his guest's goods in olden times was [is?] that the wayfaring guest has no means of knowing the neighborhood or the characters of those he may meet with at the inn. It was therefore thought right to cast that duty on the host. Knowing that this is one of the liabilities he incurs, the innkeeper can make such charge for the entertainment of his guests as will compensate him for the risk; and it may be observed that unless the law cast upon him this burthen, a dishonest innkeeper might be tempted to take advantage of a wealthy traveller. None of these reasons can apply to the case of a lodging-house keeper; and the law has never been so laid down. Although it has not been contended that there is any absolute duty on the part of the keeper of a lodging house to take care of a lodger's goods, it is said that it is his duty to take such due and proper care of them as a prudent owner might reasonably be expected to take of his own goods, and that the defendant has failed in the per-

Wkly. Notes Cas. 65 (1886). A license is not required for an amateur performance, though an admission fee is charged, because the license is the regulation of a trade or business. *Oellers v. Horn*, 3 Pa. Super. Ct. 537, 39 Wkly. Notes Cas. 559 (1896; but see England).

Tennessee. A license issued for a theatre protects travelling companies performing in it. *Taxing District v. Emerson*, 4 Lea (Tenn.), 312 (1880).

Texas. What constitutes a variety show. See *Ex parte Bell*, 32 Tex. Cr. R. 308, 22 S. W. 1040, 40 Am. St. Rep. 778 (1893).

Washington. A public dance is a public amusement. *Pearson v. Seattle*, 14 Wash. 438, 44 Pac. 884 (1896).

England. A building used for charitable performances only must be licensed. *Shelley v. Bethell*, 12 Q. B. D. 11 (1883; but see Pennsylvania).

What is a place of dancing and music. See *Clarke v. Searle*, 1 Esp. 25 (1793); *Bellis v. Burghall*, 2 Esp. 722 (1799); *Bellis v. Beal*, 2 Esp. 592 (1798); *Archer v. Willingrice*, 4 Esp. 186 (1802); *Shutt v. Lewis*, 5 Esp. 128 (1804). See *Rex v. Handy*, 6 T. R. 286 (1795; tumbling is not "an entertainment of the stage"); *Regina v. Tucker*, 2 Q. B. D. 417 (1877; a skating rink where persons skate to music is an "entertainment of like kind to music and dancing"). A portable booth used as a theatre is not a "tenement" used for entertainment, *Fredericks v. Howie*, 1 H. & C. 381 (1862), or a "house" for that purpose, *Davys v. Douglas*, 4 H. & N. 180 (1859), but it is a "place" so used. *Fredericks v. Payne*, 1 H. & C. 584 (1862).

formance of this duty on the present occasion. I am most particularly averse from affirming for the first time the proposition that a lodging-house keeper has a duty cast upon him by law to take care of his lodger's goods. I foresee great difficulties in so holding; and I think it would be casting upon him an undefined responsibility which would be most inconvenient. Considering that lodgers consist of persons of all classes,—the highest as well as the lowest,—one can hardly exaggerate the mischief which would ensue from holding that the lodging-house keeper was responsible for the safety of his lodger's goods. It would be impossible to lay down any definite test of this liability: each case must be left to the discretion or the caprice of the jury. The habits of a lodging-house keeper must vary according to the situation of the premises, and a variety of other circumstances. At watering places, for instance, it would be exceedingly inconvenient if the doors were kept locked all day. So, in seaport towns, where lodgers come suddenly and depart at short notice, the duty contended for here would be most preposterously onerous. If, on the other hand, the law is that the lodger must take care of his own goods, it only imposes upon him the same care that he is bound to take as he walks the streets. He may always secure his valuables by carrying them about with him or by placing them specially in the custody of the keeper of the house."

In his opinion in the same case Judge Byles said: "If the lodger be robbed by a servant of the lodging-house keeper, the latter is not responsible for it. That is consistent with principle as with authority. There is no contract on the part of the lodging-house keeper to take care of his lodger's goods; nor is there any bailment; and there is no precedent for the imposition of such a liability upon him. . . . I have chambers in an inn of court, or rooms in a college; if I am robbed, can I charge the benchers or the trustees because they or other servants have neglected to keep the outer gate locked, or have permitted dishonest persons to enter? Surely not. There is no sound distinction between the two cases."

§ 332. Extent of liability.

But though not liable as a bailee for the lodger's goods, the lodging-house keeper is, it seems, under a duty to keep reasonable watch over the house and its contents; and the case of *Holder v. Soulby* must in this respect be limited. It was criticised in the recent case of *Scarborough v. Cosgrove*.² In the later case Sir Richard Collins, Master of the Rolls, saw no difference in principle between the boarding-house keeper and the lodging-house keeper; and as to the latter said: "The general control of the house must be in the keeper. By the nature of the arrangement itself the custody of the lodger's effects must be in him when the lodger is not in his room, and the consideration paid ought as a matter of business to secure some protection for the lodger where the ordinary conditions to which he is expected to conform put it out of his own power to look after his effects himself. I can see no reason why there should be a presumption of immunity in his case from the common duty of a person accepting a charge to exercise at least ordinary care; *a fortiori* where he undertakes it for reward. The guest and baggage are both in a house of which he has the control, and his obligations to both of them arise in the same way out of the relation itself."

§ 333. Bath houses.

The keeper of a bath house may take the goods of a bather on deposit, in which case he is of course liable as an ordinary bailee. If he does not take the goods himself, he must use such vigilance as the nature of the case demands for the protection of the goods of the bather.³ So it was held that the proprietor of a five-cent bathing house, having a bathing tank used in common by all customers, and under the general supervision of a manager, who patrolled the place, was not liable to a regular weekly bather, who placed his clothes, as usual, upon a bench in the bathing room, for the loss of jewelry and money

² [1905] 2 K. B. 805. See also *Swann v. Smith*, 14 Daly (N. Y.) 114 (1887).

³ *Tombler v. Koelling*, 60 Ark. 62, 28 S. W. 795 (1894).

which he left in his clothes while he was taking a bath; that, under the circumstances, the proprietor had fully performed such duties towards his customers as he had undertaken to perform; and that, moreover, the failure of the bather to deposit his valuables with the proprietor, as he might have done and had done before, constituted contributory negligence on his part.⁴ On the other hand, in the case of the proprietor of a Russian and Turkish bathing establishment it appeared that while the plaintiff was absent from the room assigned to him for the purpose of disrobing, and in the bath in another part of the establishment, his apparel left in the room assigned to him was in defendant's keeping; that the assignment of the room for the purpose of disrobing was, in effect, a representation by the defendant that he would assume the custody of plaintiff's apparel at that place; that having received the sum demanded of plaintiff for the privilege of the bath, and assumed the custody of plaintiff's apparel while the latter was enjoying the privilege, defendant became a voluntary custodian of plaintiff's apparel for profit, and was bound to exercise due care to guard it against loss or theft by others having access to defendant's establishment with his permission; and that the loss or theft of plaintiff's overcoat could have been prevented if defendant had, in view of the indiscriminate admission of persons to his establishment, employed one or more competent persons to guard against such occurrences. On these circumstances the proprietor was held liable.⁵

⁴ *Schneps v. Strum*, 25 N. Y. Misc. 168, 54 N. Y. Supp. 140 (1898).

⁵ *Bird v. Everard*, 4 N. Y. Misc. 104, 23 N. Y. Supp. 1008 (1893).

TITLE VII.

SLEEPING CARS.

CHAPTER XXVII.

DUTY TO SERVE PASSENGERS.

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|---|---|
| § 341. Sleeping car not an inn.
342. Sleeping car company not a carrier.
343. Sleeping car company must serve the public.
344. Right of an applicant to a berth.
345. Right to occupy an entire section.
346. What berths are vacant; reservation of berths. | § 347. No duty of company to grant reservation.
348. Reservation by ticket.
349. Reservation of berths for way stations.
350. Failure of reserving passenger to occupy.
351. Duty to put on extra car.
352. Right to compensation. |
|---|---|

§ 341. Sleeping car not an inn.

A sleeping car is a place for the reception and entertainment of travellers, but it is not an inn.¹ It differs from an inn in many important particulars.² In brief, the inn affords necessary protection and accommodation to travellers while they rest from their journey; the sleeping car offers a single accommodation—a bed—to passengers while they continue their journey. The sleeping car does not afford needed personal protection—the carrier is obliged to protect the passenger even if he rides in the ordinary coach. Nor does the sleeping car afford entertainment; the passenger may get his meals on the train in a dining car, or even in the sleeping car

¹ *Ante*, § 37.

² *Blum v. Southern P. P. C. Co.*, 1 Flip. 500, Fed. Cas. No. 1,574 (1876).

itself, from a buffet, but this is not a necessary part of the undertaking of the car company. It is the duty of the carrier, not of the car company, to provide facilities for meals. Furthermore, the sleeping-car company does not undertake to serve all travellers, but only those whom the carrier will allow to ride in the car. For these reasons the sleeping car is almost universally held not to be an inn.³

§ 342. Sleeping car company not a carrier.

The sleeping car company is not a carrier of passengers. It provides, to be sure, a vehicle for them to ride in, and accommodations for their comfort while riding; but the railroad company and not the car company undertakes and is responsible for the transportation, and has entire charge of the journey. If the journey is unduly delayed or interrupted or the train meets with an accident whereby the passenger is injured, the fault is with the railroad company alone. It is accordingly almost universally held that a sleeping-car company is not a common carrier.⁴ Therefore, the sleeping-car company is not

³ *Blum v. Southern P. P. C. Co.*, 1 *Flip.* 500, *Fed. Cas. No.* 1,574 (1876); *Pullman P. C. Co. v. Adams*, 120 *Ala.* 581, 24 *So.* 921, 74 *Am. St. Rep.* 53, 45 *L. R. A.* 767 (1898); *Pullman P. C. Co. v. Freudenstein*, 3 *Col. App.* 540, 34 *Pac.* 578 (1893); *Pullman's P. C. Co. v. Hall*, 106 *Ga.* 765, 32 *S. E.* 923, 71 *Am. St. Rep.* 293 (1899); *Pullman P. C. Co. v. Smith*, 73 *Ill.* 360, 24 *Am. Rep.* 258 (1874); *Woodruff S. & P. C. Co. v. Diehl*, 84 *Ind.* 474, 43 *Am. Rep.* 102 (1882); *Whicher v. Boston & A. R. R.*, 176 *Mass.* 275, 57 *N. E.* 601 (1900); *Illinois C. R. R. v. Handy*, 63 *Miss.* 609, 56 *Am. Rep.* 846 (1886); *Welch v. Pullman P. C. Co.*, 16 *Abb. Pr. N. S. (N. Y.)* 352 (1874); *Tracy v. Pullman P. C. Co.*, 67 *How. Pr. (N. Y.)* 154 (1884); *Welding v. Wagner*, 1 *City Ct. Rep. (N. Y.)* 66 (1878); *Fall River & M. Co. v. Pullman P. C. Co.*, 6 *Ohio Dec.* 85 (1896); *Pullman P. C. Co. v. Gardner*, 3 *Penny. (Pa.)* 84, 14 *W. N. C.* 17 (1883); *Pullman P. C. Co. v. Gavin*, 93 *Tenn.* 53, 23 *S. W.* 70, 42 *Am. St. Rep.* 902, 21 *L. R. A.* 289 (1893); *Dargan v. Pullman P. C. Co.*, 2 *Wills. (Tex.)* § 691 (1885). In one or two cases, however, a sleeping car has been held to be an inn. *Pullman P. C. Co. v. Lowe*, 28 *Neb.* 239, 44 *N. W.* 226 (1889); *Sise v. Pullman P. C. Co.*, 1 *Quebec Super. Ct.* 9 (1892).

⁴ *Blum v. Southern P. P. C. Co.*, 1 *Flip.* 500, *Fed. Cas. No.* 1,574 (1876); *Lemon v. Pullman P. C. Co.*, 52 *Fed.* 262 (1892); *Pullman P. C. Co. v. Adams*, 120 *Ala.* 581, 24 *So.* 921, 74 *Am. St. Rep.* 53, 45 *L. R. A.* 767 (1898); *Pullman P. C. Co. v. Freudenstein*, 3 *Col. App.* 540, 34 *Pac.* 578 (1893);

responsible for the act of a railroad company over which its cars are scheduled to run in failing to run trains⁵ or in unreasonable delay in running its trains;⁶ nor is it liable for the wrongful expulsion of the passenger from the train by the servants of the railroad.⁷

§ 343. Sleeping car company must serve the public.

Though neither an innkeeper nor a carrier, the sleeping-car company is engaged in an analogous public employment, and must serve such members of the public as are within the class which it undertakes to serve.⁸ As Mr. Justice Mulkey said in *Nevin v. Pullman Palace Car Company*:⁹ "The running of these sleepers has become a business and social necessity. Such being the case, can it be maintained the law imposes no obligations or restrictions on this company in the discharge of its duties to the public? Or, more accurately put, is it true that this company owes no duties to the public except such as are due from one mere private person to another?"

Pullman's P. C. Co. v. Hall, 106 Ga. 765, 32 S. E. 923, 71 Am. St. Rep. 293 (1899); *Pullman P. C. Co. v. Smith*, 73 Ill. 360, 24 Am. Rep. 258 (1874); *Woodruff S. & P. C. Co. v. Diehl*, 84 Ind. 474, 43 Am. Rep. 102 (1882); *Pullman P. C. Co. v. Gaylord*, 9 Ky. L. Rep. 58 (1887); *Whitney v. Pullman's P. C. Co.*, 143 Mass. 243, 9 N. E. 619 (1887); *Dawley v. Wagner P. C. Co.*, 169 Mass. 315, 47 N. E. 1024 (1897); *Scaling v. Pullman P. C. Co.*, 24 Mo. App. 29 (1886); *Tracy v. Pullman P. C. Co.*, 67 How. Pr. (N. Y.) 154 (1884); *Welding v. Wagner*, 1 City Ct. Rep. (N. Y.) 66 (1878); *Pfaelzer v. Pullman P. C. Co.*, 4 W. N. C. (Pa.) 240 (1877); *Pullman P. C. Co. v. Gardner*, 3 Penny. (Pa.) 84, 14 W. N. C. 17 (1883); *Pullman P. C. Co. v. Gavin*, 93 Tenn. 53, 23 S. W. 70, 42 Am. St. Rep. 902, 21 L. R. A. 289 (1893). The contrary is stated in *Pullman P. C. Co. v. Pollock*, 69 Tex. 120, 5 Am. St. Rep. 31 (1887). In Mississippi a sleeping-car company is declared a common carrier by the constitution. *Pullman P. C. Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897).

⁵ *Simms v. Pullman S. C. Co.*, Fed. Cas. No. 12,869a (1878).

⁶ *Pfaelzer v. Pullman P. C. Co.*, 4 W. N. C. (Pa.) 240 (1877).

⁷ *Pullman P. C. Co. v. Lee*, 49 Ill. App. 75 (1892).

⁸ *Searles v. Mann B. C. Co.*, 45 Fed. 330 (1891); *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 46 Am. Rep. 688 (1883); *Pullman P. C. Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897); *Pullman P. C. Co. v. Booth* (Tex. Civ. App.), 28 S. W. 719 (1894).

⁹ *Supra*.

Can it be possible that the common carrier, the ferryman, the innkeeper, and even the blacksmith on the roadside, are all, by mere force of law, placed under special obligations and duties to the public which they are bound to observe in the exercise of their respective callings, while, at the same time, this company is entirely relieved from the observance of all such duties and obligations which are not expressly contracted for? We think not. To so hold would be to unjustly discriminate between parties similarly situated, and make the law inconsistent with itself, to the great detriment of the public. If, then, this company owes any duties to the community by reason of its relation to the public, as we hold it does, manifestly one of them is, that it shall treat all persons whose patronage it has solicited with fairness, and without unjust discrimination. When, therefore, a passenger who, under the rules of the company, is entitled to a berth upon payment of the usual fare, and to whom no personal objection attaches, enters the company's sleeping car at a proper time for the purpose of procuring accommodations, and in an orderly and respectful manner applies for a berth, offering or tendering the customary price therefor, the company is bound to furnish it, provided it has a vacant one at its disposal."

§ 344. Right of an applicant to a berth.

Accordingly, it is a legal wrong for the company to refuse to furnish a berth to a proper person upon his application, if it has an empty berth.¹⁰ The question whether the applicant is a proper person must be settled by the carrier. "It was the privilege of the railroad company, by its agents, to determine who should occupy seats on its trains, and that included the Pullman car, and to determine whether a party had paid the proper amount, and was entitled to travel on the train to which it was attached. Thus, the agent was then in a dual capacity, as acting for the railroad and for the car company at the same

¹⁰ *Lemon v. Pullman P. C. Co.*, 52 Fed. 262 (1892); *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 46 Am. Rep. 688 (1883).

time. It was not the privilege of the agent of the car company to sell a berth to any party unless he had a first-class ticket on the railroad, or a ticket which entitled him to travel in the Pullman car or in a first-class car."¹¹ Thus, as in the case last quoted, the carrier may and commonly does require that no one but a passenger entitled to first-class accommodations shall ride in a parlor or sleeping car.¹² So the carrier may require that no one shall ride in such a car except a passenger having a through ticket; and a car company may justify itself by such a requirement of the carrier for a refusal to receive a passenger riding on a split ticket.¹³ "The defendant company could only contract with a passenger when he was of such a class that the railroad company permitted the contract to be made."¹⁴

§ 345. Right to occupy an entire section.

The question remains whether a car company may sell a whole section to a single applicant, and justify the refusal to supply the upper berth, unused by the purchaser, to a passenger applying for it later. There is not much direct authority upon this question; but there are obviously cases where the right to a whole section might properly be given to a passenger; as, for instance, to a woman or a sick person. The case is of course stronger when the upper berth demanded by the applicant is in a separate room, like a drawing-room or stateroom; and in that case it has been held that the company may sell the whole room to a single applicant.¹⁵ No authority has been found where the upper berth demanded was in an ordinary open section in the car; but the same decision would probably be given in such a case.

¹¹ Hill, Dist. J., in *Lemon v. Pullman P. C. Co.*, *supra*.

¹² *Lemon v. Pullman P. C. Co.*, 52 Fed. 262 (1892); *Pullman P. C. Co. v. Lee*, 49 Ill. App. 75 (1893).

¹³ *Lawrence v. Pullman's P. C. Co.*, 144 Mass. 1, 10 N. E. 723, 59 Am. Rep. 58 (1887).

¹⁴ Devens, J., in *Lawrence v. Pullman's P. C. Co.*, *supra*.

¹⁵ *Searles v. Mann B. C. Co.*, 45 Fed. 330 (1891).

§ 346. What berths are vacant; reservation of berths.

It may sometimes be difficult, owing to the practice of reserving berths, to determine whether the company has a vacant berth which it must give to an applicant. If a berth is neither occupied nor under reservation, it must obviously be given to the proper applicant. But it is the custom to reserve berths in advance for applicants in the order of application. Where a berth is so reserved, whether by contract or by the issuing of a berth ticket, the person for whom it is reserved has a right to occupy it, and another applicant, even if he actually enters the car and demands it before the person for whom it is reserved appears, has no right to it.¹⁶

§ 347. No duty of company to grant reservation.

While the company may reserve a berth and justify a refusal to give the berth later to another, it is under no obligation to grant a reservation to one demanding it. This was held in a case where an applicant found all the berths occupied, but one was to be vacated at the next station; he then demanded of the conductor a ticket for this berth from that station to his destination. The conductor refused to sell him such a ticket, and the refusal was held justified, the court saying: "While the conductor might have sold to plaintiff a ticket entitling him to the use of this berth from Birmingham to Cincinnati before reaching the former place, he was not under any obligation to do so."¹⁷ It would follow that upon the berth being vacated the conductor, not having consented to reserve it, must sell it to the first applicant, whether the former applicant or another.

§ 348. Reservation by ticket.

The ordinary method of reserving a berth is by purchasing a ticket for the berth. Such a ticket seems to be transferable,

¹⁶ *Mann B. C. Co. v. Dupré*, 54 Fed. 646, 21 L. R. A. 289 (1893); *Pullman P. C. Co. v. Booth* (Tex. Civ. App.), 28 S. W. 719 (1894).

¹⁷ *Searles v. Mann B. C. Co.*, 45 Fed. 330 (1891).

and good in the hands of a transferee who has the proper railroad ticket.¹⁸

§ 349. Reservation of berths for way stations.

It is a common practice of sleeping car companies to reserve a certain number of sections for way stations, and even if all berths not so reserved are full an applicant at the place of departure of the train will not be given one of the reserved berths until the train arrives at the way station and the passengers at that point are supplied. This seems to be a reasonable regulation, provided no more than the fair proportion of berths are so reserved. If this were not allowed, passengers at way stations would be at serious disadvantage by reason of the earlier opportunity of passengers at prior stations to occupy the berths.

§ 350. Failure of reserving passenger to occupy.

While a car company may lawfully reserve berths for intending passengers, it must be clear that they cannot thereby give a greater accommodation to the intending passenger than they could give one who appeared in person at the station and there paid for his berth. As no passenger could engage more than a single section, and could engage that only if he actually occupied it, so an intending passenger can reserve no more; and if he does not appear to occupy the berth reserved for him, another applicant may have it.

A somewhat similar problem is presented when a berth has been reserved for a passenger who intends to take the train at a way station, and a person on the train demands the right to occupy the berth until that station is reached. Unless there is some special inconvenience in doing so, the car company would seem to be obliged to allow the applicant to use the berth until it is needed for the person who has engaged it.

¹⁸ Pullman P. C. Co. v. Reed, 75 Ill. 125, 131, 20 Am. Rep. 232 (1874); Curlander v. Pullman P. C. Co. (Md.), 28 Chicago Leg. News 68 (1895).

§ 351. Duty to put on extra car.

Whether a car company may be obliged, in case of an unexpectedly large demand for berths, to put on an extra car, provided one is available and the carrier will permit it, is a matter of some doubt. The car company cannot attach another car to the train except by consent of the railway company; but assuming such consent, it may be argued that the car company is able to supply the demand for berths, and therefore should do so. On the other hand, it may be argued that the car company, like the innkeeper, provides certain cars on certain trains in which to carry on its business, and that its undertaking is to receive passengers in such cars only. In the absence of authority on this point the question must be left in doubt.

§ 352. Right to compensation.

It must be clear that like any other person performing a public service the car company is entitled to demand reasonable compensation as a condition of extending its accommodation to the applicant; and that this compensation is in addition to the fare paid to the carrier.¹⁹ In a New York case²⁰ it was held that a passenger who could find no seat in the ordinary passenger coaches might demand a seat in a parlor car without extra charge. However that may be when the car is owned by the carrier²¹ it is clear to-day that even under such circumstances a passenger cannot without paying extra compensation demand a seat in a parlor or sleeping car belonging to an independent car company. The New York decision must be regarded as obsolete upon this point; and it is to be noticed that even in that case action was not brought against the car company for refusal to furnish a seat, but against the carrier for the ejection of its passenger from the only part of the train in which he could get a seat.

¹⁹ *St. Louis, A. & T. Ry. v. Hardy*, 55 Ark. 134, 17 S. W. 711 (1891).

²⁰ *Thorpe v. New York C. & H. R. R. R.*, 76 N. Y. 402, 32 Am. Rep. 325 (1879).

²¹ See on this point some of the language used in *St. Louis A. & T. Ry. v. Hardy*, *supra*.

CHAPTER XXVIII.

RESPONSIBILITY FOR THE SAFETY AND COMFORT OF THE PASSENGER.

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| § 361. Duty to provide appliances.
362. Appliances for convenient use of upper berth.
363. Warming and ventilating the car.
364. Providing berth for which ticket has been issued.
365. Providing berth throughout the journey.
366. Excuse for ejecting passenger.
367. Right of company to change berth.
368. Who may occupy berth. | § 369. Making up berth.
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375. Cumulative liability of the carrier.
376. Duty of the passenger to take care of the berth.
377. Right of the passenger to assign or exchange berth. |
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§ 361. Duty to provide appliances.

The duty of the car company is obviously to have a safe and comfortable car, fitted up with all reasonable appliances for the safety and comfort of the passenger, "such supplies and conveniences as are usually found in like sleepers, and are necessary to the health and comfort of passengers."¹

§ 362. Appliances for convenient use of upper berth.

The upper berth is a difficult, and under some circumstances dangerous, place to get in and out; and the car company must take care accordingly. For any injury caused by improper speed or jerking in running the train the carrier and not the car company is of course liable;² but anything which the car

¹ *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 46 Am. Rep. 688 (1883).

² *Pullman's Palace Car Co. v. Fielding*, 62 Ill. App. 577 (1896); *Smith v. Canada Pac. R. R.*, 34 N. Sco. 22 (1901).

company can reasonably do to assist passengers in the upper berths, such as providing call-bells and steps, it must do. "If it furnishes upper berths, which common observation and experience teaches are difficult, if not dangerous, to alight from when the car is in rapid motion, it is not carrying its obligation any too far to require it to have steps, as it usually does, or other mechanical contrivances, to assist in that act. And having steps it is necessary, if they are movable, as is the custom, that servants be employed to bring them to the aid of the passenger, and in the night time such servants should be alert and awake, ready to respond to the ring of the bell provided to call them. It is not alone the undertaking of such a company to provide the bed to sleep in, but also reasonably safe means of getting into and out of the bed. . . . The company by providing bells for that purpose, held out a notice that the bells would be responded to when rung, whether the passenger be sick or well." ³ In the case in which this opinion was delivered a passenger who was thrown from an upper berth and injured, in trying to descend after having vainly rung the bell to summon the porter, was allowed to recover damages from the car company.

§ 363. Warming and ventilating the car.

The car company must furnish a comfortably warm car. This, however, does not mean that the car must be warmed to just the temperature and ventilated to just the degree desired by any particular passenger. The car company owes to any passenger a duty in this respect no less important than that owed to each of the others; and "considering the varying predisposition towards heat and cold, and the exacting demands of passengers generally," it is not usually necessary to comply with the particular demands of any one passenger.⁴ So long as the warmth and ventilation are reasonably suited

³ Shepard, J., in *Pullman's Palace Car Co. v. Fielding*, 62 Ill. App. 577, 579 (1896).

⁴ *Hughes v. Pullman's P. C. Co.*, 74 Fed. 499 (1896).

to the average man, the company is probably complying with its duty.

It is not negligence to leave a ventilating window open at night, even if rain got in and wet the occupant of the upper berth, where he might have closed it himself, and where the porter would always open or close such window at the request of the occupant of an upper berth and he made no such request.⁵

§ 364. Providing berth for which ticket has been issued.

If for any reason a berth or seat which has been sold to a passenger is not furnished to him, he is entitled to recover all the damages thereby caused, including the discomfort suffered from it.⁶ If the passenger loses his berth ticket, but brings written evidence from the agent that he is entitled to the seat, it would seem to be the company's duty to let the purchaser occupy the seat without further payment.⁷ If, to be sure, the ticket is presented by another person, and the company has no reason to refuse to honor it, the original purchaser must lose his right; but the mere loss of the ticket, which is not presented by anyone else, ought to cause forfeiture of the right only so far as the reasonable methods of business of the company require it. The unsupported statement of the purchaser may not be received, because it cannot be used as a voucher by the conductor; but the written statement of the agent who has sold the ticket and is accountable for the money paid ought to be received. The case is entirely different from that of the loss of a railroad ticket. The railroad ticket ordinarily entitles the holder to no particular ac-

⁵ *Edmundson v. Pullman Palace Car Co.*, 92 Fed. 824 (1899).

⁶ *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 46 Am. Rep. 688 (1883); *Buck v. Webb*, 58 Hun (N. Y.), 185, 11 N. Y. Supp. 617 (1890); *Braun v. Webb*, 32 N. Y. Misc. 243, 65 N. Y. Supp. 668 (1900); *Pullman Palace Car Co. v. Nelson*, 22 Tex. Civ. App. 223, 54 S. W. 624 (1899); *Pullman P. C. Co. v. Booth* (Tex. Civ. App.), 28 S. W. 719 (1894); *Nash v. Copeland*, 4 New So. Wales W. N. 41.

⁷ *Pullman P. C. Co. v. Reed*, 75 Ill. 125, 20 Am. Rep. 232 (1874); *Buck v. Webb*, 58 Hun (N. Y.), 185, 11 N. Y. Supp. 617 (1890).

commodation, but on the other hand it may be presented whenever the holder chooses. The berth ticket, on the other hand, entitles the holder to a particular berth on a particular train, and if it is not then presented it is of no value.

§ 365. Providing berth throughout the journey.

The passenger who is provided with a berth during a certain journey is entitled not only to have the berth prepared for him, but also to keep that or another equally good berth throughout the journey. This becomes a contractual obligation of the car company, to which it may be held although the railroad company has entire control over the train and is to blame for ejecting the passenger. Thus, where the passenger was wrongfully removed from the sleeping car to an ordinary coach before the completion of the journey, the car company was held responsible; the court saying that, "the Pullman-Company will not be relieved of its contract by an arrangement with the railroad company which prevented it from carrying it out."⁸ So where a plaintiff, having a railroad ticket from New Orleans to New York over a certain route, applied to a sleeping-car agent for a berth through, presenting his ticket, and was sold a berth in a certain car, this was tantamount to an agreement that this car should carry him over the route called for by his ticket. The car as a matter of fact went over another route, and the passenger upon presenting his ticket was refused passage by the railroad company. The court held that the car company was guilty of a breach of obligation.⁹ And where the car in which a berth had been assigned to the plaintiff was dropped from the train by the railroad company before reaching the destination, the car company was held responsible for a breach of its obligation.¹⁰ And so where the passenger was forced to leave the

⁸ Pullman P. C. Co. v. Cain, 15 Tex. Civ. App. 503, 40 S. W. 220 (1897).

⁹ Pullman's P. C. Co. v. King, 99 Fed. 380 (1900); Pullman P. C. Co. v. McDonald, 2 Tex. Civ. App. 322, 21 S. W. 945 (1893).

¹⁰ Pullman P. C. Co. v. Taylor, 65 Ind. 153, 32 Am. Rep. 57 (1879). See, however, *contra*, Duval v. Pullman P. C. Co., 62 Fed. 265 (1894).

car because it had caught fire, owing to the negligence of the servants of the company, the company was liable.¹¹

§ 366. Excuse for ejecting passenger.

The car company may, however, have a legal excuse for ejecting a passenger before he reaches his destination. Thus, where a passenger develops a contagious disease, like small-pox, while on the journey, consideration for the other passengers requires that he should be removed in a reasonable way; and so if a man was quarrelsome or intoxicated and boisterous he might be removed, having due regard to his safety and comfort.¹²

§ 367. Right of company to change berth.

Some doubt exists on the authorities whether the company having sold a berth to a passenger may then change the berth, and compel the passenger to occupy another. In the case of *Mann Boudoir Car Company v. Dupré*¹³ a berth had been assigned to a woman, made up, and she had gone to bed in it; the conductor afterwards discovered that he had made a mistake, since the berth had been engaged by another person, and compelled her to leave it and take another, equally good in itself. The passenger brought action, and the court without much consideration held that action would not lie. It might be doubtful in such a case whether any other berth would be equal to the one in which a woman had already gone to bed; and whether it was reasonable in such a case to insist upon a change of berth in the middle of the night. The fact that the company was under obligation to furnish this berth to a third party would of course have no bearing on its obligation to the plaintiff.

In the case of *Pullman Palace Car Company v. Taylor*,¹⁴ however, the right of the car company to change the berth

¹¹ *Pullman P. C. Co. v. Barker*, 4 Col. 344, 34 Am. Rep. 89 (1878).

¹² *Paddock v. Atchison, T. & S. F. R. R.*, 37 Fed. 841, 4 L. R. A. 231 (1889).

¹³ 54 Fed. 646, 21 L. R. A. 289 (1893).

¹⁴ 65 Ind. 153, 32 Am. Rep. 57 (1879).

assigned was much limited, and it would seem altogether denied. The court said that the contract was to furnish the berth assigned "or at least to furnish an equally desirable berth in the same locality, in another car of equal safety, convenience and comfort." In that case the car to which the plaintiff had been assigned was dropped by the railroad short of his destination; and the car company offered him in another car lower berth number 1, or a lower berth in the drawing-room, in place of lower berth number 6, to which he had been assigned. He was held entitled to recover damages. Judge Worden said: "It was for the particular berth in the car that the plaintiff paid his money. That berth was the one which, by the contract, he was to have. There is, doubtless, some choice in berths; and, whether from mere caprice or from good reason the plaintiff chose and paid for that berth, he was entitled to have it. The defendant could not, without breach of contract, deprive him of that berth, although it offered to furnish him another, any more than the plaintiff could have claimed another, if he had happened to change his mind and desire another."

§ 368. Who may occupy berth.

The ordinary berth ticket in a sleeping car permits the occupancy of the berth by two persons. If, however, a ticket or pass is issued giving only one person a right to occupy the berth he cannot invite another person to share it with him. This difference was illustrated in a case where a person took with him his wife and child on an excursion, under an arrangement by which he was to buy regular tickets going and receive a pass returning. He bought a section in the sleeping car going, and the child was allowed as a matter of course to share the mother's berth; on the return he received a pass for a section for himself and wife, and the child was not allowed to share the wife's berth on the pass.¹⁵ And in one case it

¹⁵ Pullman Palace Car Co. v. Marsh, 24 Ind. App. 129, 53 N. E. 782 (1899).

was implied, though probably without sufficient consideration, that a person has no right to occupy, with another a berth engaged by the latter.¹⁶

If the husband procures a berth, he and his wife are of course allowed to occupy it;¹⁷ but on the other hand it is the duty of the company to prevent a man and woman, not being married to one another, to occupy the same berth. As it is of course impossible for the company to investigate the actual fact in case a marriage is claimed, the company may act on reasonable appearances; and if the alleged husband and wife deal separately with the company, procuring different berths, and especially if the alleged wife went to the husband's berth clandestinely, the company would be justified in refusing to permit them to occupy one berth together. In a case of this sort the court said: "No question can exist with regard to the right of a husband and wife to occupy the same berth in a sleeping car. At the same time the proprietors of such conveyances imperatively owe to the travelling public the duty of seeing that men and women who do not occupy to each other that relation shall not occupy the same one. Usually there need exist no difficulty about preserving and enforcing both the right and the duty. When a berth is contracted for by the husband, either with an express understanding that it is engaged for the joint occupancy of himself and wife or under circumstances that are not misleading within themselves, the refusal to permit such occupancy, without other reason than the difference of sex, and when such refusal would be a breach of contract, would give to the injured party a right of action for damages, in which might be considered circumstances of insult and aggravation attending the breach. . . . It may be admitted that there was nothing improper in the conduct of the plaintiff and his wife when their relationship to each other is considered. And yet it cannot be affirmed that their actions

¹⁶ Pullman P. C. Co. v. Bales, 80 Tex. 211, 14 S. W. 855 (1890).

¹⁷ Pullman P. C. Co. v. Bales, 80 Tex. 211, 14 S. W. 855, 15 S. W. 785 (1890).

were not under the circumstances calculated to excite the suspicion and arouse the vigilance of defendant's servants, and make it their duty to investigate the matter and apply a remedy for the wrong, if one was found to exist."

§ 369. Making up berth.

While the passenger is doubtless entitled to have his berth made up at any reasonable time,¹⁸ there is no absolute duty to make it up at once upon demand. The utmost duty of the company is to make it up within a reasonable time after demand. Consequently, when a passenger, early in the evening, demanded that his berth should be made up at once, and the porter declined to do so until he had finished serving an order for luncheon, but actually made the berth ready within half an hour, the passenger was held to have no cause of action against the car company.¹⁹

§ 370. Duty to awaken passengers.

It is the duty of the car company to awaken a sleeping passenger long enough before reaching his destination to enable him to dress and leave the train decently, safely, and without undue haste or delay.²⁰ In the case of *McKeon v. Chicago, Milwaukee & St. Paul Railway* ²¹ it appeared that the plaintiff, a married woman, had to change from one sleeping car to another early in the morning at a junction. The porter failed to awake her before reaching the junction, and she was obliged to hurry from one car to another without a chance to dress herself properly. The company was held liable for the damages she suffered. Mr. Chief Justice Cassoday said: "It became the duty of the defendant, whether stipulated in the

¹⁸ *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 46 Am. Rep. 688 (1883).

¹⁹ *Pullman's Palace Car Co. v. Ehrman*, 65 Miss. 383 (1888).

²⁰ *Airey v. Pullman P. C. Co.*, 50 La. Ann. 648, 23 So. 512 (1898); *Pullman P. C. Co. v. Smith*, 79 Tex. 468, 14 S. W. 993, 23 Am. St. Rep. 356, 13 L. R. A. 215 (1891); *McKeon v. Chicago M. & S. P. Ry.*, 94 Wis. 477, 69 N. W. 175, 59 Am. St. Rep. 909, 35 L. R. A. 252 (1896).

²¹ *Supra*.

contract of carriage or not, to either awaken her in time to make the necessary preparation for such change in a suitable and decent manner, upon reaching the station, or, failing to so awaken her before reaching the station, to hold the train at that point for a sufficient length of time to enable her to make such preparation as was necessary to change cars without trepidation or the exposure of her person to the gaze of spectators."

§ 371. Regulations.

Regulations may doubtless be made by the car company to govern the conduct of passengers in its cars; but such regulations must be reasonable in themselves, and must be properly published, so that passengers may know of them. Regulations of the company communicated orally from time to time to its employees, not printed on any paper or brought to knowledge of travellers except when communicated by the employees, are not binding. "It would seem to be an unheard-of requirement to demand obedience to the defendant's rules, when those rules are not published and are not known to travellers who are to be guided by them." ²²

§ 372. Safety of the car.

A car company is bound to have a car which is safe both in its construction and in its use; and it is therefore responsible to a passenger for any injury caused by a negligent management by its servant of the appliances in the car. So where a passenger was injured by a headboard, placed between two sections by the porter, falling upon him, from a cause which was not apparent, he was entitled to compensation; ²³ and in the same way the company would be liable for an upper berth improperly secured falling on a passenger's head. ²⁴

²² Woods, C. J., in Pullman Palace Car Co. v. Lawrence, 74 Miss. 782, 796, 22 So. 53 (1897).

²³ Jenkins v. Louisville & N. R. R., 104 Ky. 673, 47 S. W. 761 (1898).

²⁴ In the actual decisions the carrier has been held liable; *post*, § 375. If the carrier is liable, *a fortiori* the car company is liable.

It is the duty of the company to keep the car in such a condition that the passenger who has occasion to pass through it at night may do so safely. "It is a matter of common knowledge that on such cars passengers are expected to use the conveniences of the car during the night, and also are awakened in time that they may both dress and make their toilets before arriving at their destination;" and the company must therefore sufficiently light the toilet rooms, and secure doors through which a passenger might accidentally go and be injured.²⁵ So it must keep the aisles clear of large articles of luggage or other obstacles over which a passenger might stumble and be hurt.²⁶

§ 373. Protection of passengers.

It is the duty of the sleeping-car company to guard its passengers from harm, so far as it may reasonably do so. Thus, it must guard passengers from the attacks of wrongdoers, if such attacks can be foreseen; but where the attack cannot be foreseen, as in a case where a passenger is killed by an assassin, the company is not liable. "It cannot be deemed to have anticipated nor expected to guard and protect him against a crime so horrid, and happily so rare, as that of murder. . . . While not directly responsible to a passenger for a wrong inflicted by an intruder, or a stranger, or a fellow passenger, they are responsible for such injury if it appears that the companies knew, or ought to have known, that danger existed or was reasonably to be apprehended, and that they could, by the use of the agencies at their disposal, have prevented the mischief."²⁷

So it is the duty of the car company to protect its passenger, so far as it may, against annoyance and insult. Where the company allowed drunken persons to enter a sleeping car and

²⁵ *Piper v. New York C. & H. R. R.*, 76 Hun (N. Y.), 44, 27 N. Y. Supp. 593 (1894).

²⁶ *Levien v. Webb*, 30 N. Y. Misc. 196, 61 N. Y. Supp. 1113 (1899).

²⁷ *Connell v. Chesapeake & O. Ry.*, 93 Va. 44, 24 S. E. 467, 57 Am. St. Rep. 786 (1896).

use vulgar, profane and indecent language it was liable in damages to a female passenger for the injury thereby sustained.²⁸

§374. Injury by servant of the company.

Since it is the duty of the company to protect the passenger from injury so far as it is reasonably possible to do so, and the company's conductor and porter are employed for the purpose, among others, of performing this duty, it follows that for every negligent or intentional injury to the passenger by the conductor or the porter the company is liable; since the servant who inflicted the injury could and should have prevented it. Consequently, where the porter shot a passenger by reason of negligently handling a pistol the company was liable;²⁹ and for the same reason the company is liable for an assault upon a passenger by the porter.³⁰

Where a passenger from an ordinary car enters a Pullman and is there assaulted by a servant of the company, the company owes such passenger no duty of protection; and unless the assault is in the course of the porter's employment, which is seldom the case, the company is not responsible as master, and the assaulted passenger cannot maintain an action against the company.³¹

§375. Cumulative liability of the carrier.

The railroad company is also liable for accidents caused by improper construction or use of the cars, since as a carrier it is responsible for the safety of the vehicles in which its passengers are carried.³² And for the same reason it is liable

²⁸ *Houston E. & W. T. Ry. v. Perkins*, 21 Tex. Civ. App. 508, 52 S. W. 124 (1899).

²⁹ *Heenrich v. Pullman P. C. Co.*, 20 Fed. 100 (1884).

³⁰ *Campbell v. Pullman P. C. Co.*, 42 Fed. 484 (1890); *Pullman P. C. Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897).

³¹ *Williams v. Pullman P. C. Co.*, 40 La. Ann. 87, 3 So. 631 (1888); *Cassedy v. Pullman P. C. Co. (Miss.)*, 17 So. 373 (1895).

³² *Pennsylvania Co. v. Roy*, 102 U. S. 451, 26 L. Ed. 141 (1880); *Railroad Co. v. Walrath*, 38 Oh. S. 461, 43 Am. Rep. 433 (1882).

for an assault by the porter upon the passenger, since the carrier must protect the passenger, and has delegated the duty to the car company and its servants.³³

§ 376. Duty of the passenger to take care of the berth.

The passenger is under an obligation to deal properly with the berth and its furniture while he occupies it. As the Supreme Court of Illinois said:³⁴ "He impliedly agreed to conduct himself in a quiet and orderly manner, to take due and proper care of the berths while in his possession, and surrender the same at the end of his journey in as good condition as when assigned to him, necessary wear excepted."

§ 377. Right of the passenger to assign or exchange berth.

The question whether a passenger who has obtained a right to a berth may assign the right to another passenger, or may exchange berths with another passenger, seems never to have been passed upon by a court of last resort. It was, however, elaborately considered and decided in the affirmative by the Superior Court of Baltimore. In that case the facts as they appeared in evidence were that the plaintiff had been able to secure an upper berth only; a friend who had taken a section from Washington to Chicago, but left the train about seven hours before reaching Chicago, handed the plaintiff his berth check, and gave him permission to occupy the berth during the rest of the journey. The conductor, however, resold the section, and ejected the plaintiff. It was held that the plaintiff had a right to ride in the section, and he was allowed to recover.³⁵ Mr. Justice Ritchie said: "The contract for the use of a section is described in the text-books and in the regulations of the company as a contract of sale—a sale of a given 'space' in a designated car. It is a hiring or a *quasi* lease of the section, and gives to the passenger the right to the use of

³³ *Dwinelle v. New York C. & H. R. R.*, 120 N. Y. 117, 24 N. E. 319, 17 Am. St. Rep. 611 (1890).

³⁴ *Nevin v. Pullman P. C. Co.*, 106 Ill. 222, 234, 46 Am. Rep. 688 (1883).

³⁵ *Curlander v. Pullman P. C. Co. (Md.)*, 28 Chicago Leg. News 68 (1895).

the same with its comforts and conveniences between the points designated on the ticket. . . . It makes no difference whether the porter makes up the berth and dusts off the seat for one passenger or another. The company sells the use of its section, with the right to some trifling services from its porter, from one point to another, and is paid in full for the same; it can make no possible difference to it whether the section is occupied by one first-class passenger or another, and whoever may hold it, the company can be called upon to do or furnish nothing that it has not agreed to and been paid for. If the holder leaves the train without transferring his section, it might be inferred that he had abandoned it to the company, and it might be resold, but when the company undertakes to sell again what it has already once sold and been paid for, it does so at the risk of trespassing upon the rights of others.

“It is held in Searles’ case³⁶ that the purchaser of a section may share its use with any proper persons whom he invites into it; this is because he has purchased the use of the whole section, and as he can bestow on others the right to use part of it while he is there, I can see no reason why he cannot confer upon them the right to continue the use of it when he leaves the train before the end of the trip for which it has been sold. It is also conceded, as I have said, that the purchaser may transfer his section before he enters upon his journey. I can see no reason why he cannot transfer it immediately after starting if he chooses to ride in a passenger coach; or why two passengers might not exchange sections; or why, after having gone half of his journey, the holder might not then transfer his section for the balance of the trip, and himself withdraw into a passenger coach. It is conceded that he can make such transfers as long as he remains on the train, provided he gives notice to the conductor and gets his assent. But the assent of the defendant to such transfers is not necessary, because there is no condition in the contract which requires it. If the holder of the section, after having gone part of his journey,

³⁶ Searles v. Mann B. C. Co., 45 Fed. 330 (1891).

can transfer it to another for the rest of the trip, he himself continuing on the train but riding in a passenger coach, as I think he can do, he can make a valid transfer on leaving the train, because it makes no difference to the Pullman Company, which has nothing to do with his contract of transportation, whether he withdraws into a passenger coach or leaves the train." The case was not carried to a higher court.

In spite of the strong position and the able argument of the court in this case, the correctness of the decision may well be doubted. The assumption that the sale of a berth to a passenger is in any way like a lease seems fundamentally erroneous. The sale of the berth is the mere grant of a license to occupy the berth; a license entirely personal to the passenger to whom it is sold. If he chooses not to exercise his license, no one has a right to complain that another is not allowed to do so. It is possible that the company would have no right to object to an exchange of berths between two first-class passengers, but an assignment of a berth is probably not legally effective.

CHAPTER XXIX.

RESPONSIBILITY FOR THE PROPERTY OF THE PASSENGER.

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| § 381. Liability for negligence.
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§ 381. Liability for negligence.

As has been seen,¹ a sleeping-car company is not an insurer either as a common carrier or as an innkeeper. If it is to be held liable for loss of the passenger's goods it must be on the ground that it has been negligent in guarding the goods from loss. The company is not liable in the absence of negligence.² When, however, goods of the passenger are lost through the

¹ *Ante*, §§ 341, 342.

² *Pullman P. C. Co. v. Freudenstein*, 3 Col. App. 540, 34 Pac. 578 (1893); *Pullman P. C. Co. v. Smith*, 73 Ill. 360, 24 Am. Rep. 258 (1874); *McMurray v. Pullman's P. C. Co.*, 86 Ill. App. 619 (1899); *Voss v. Wagner P. C. Co.*, 16 Ind. App. 271, 43 N. E. 20, 44 N. E. 1010 (1896); *Whicher v. Boston & A. R. R.*, 176 Mass. 275, 57 N. E. 601, 79 Am. St. Rep. 314 (1900); *Root v. New York C. S. C. Co.*, 28 Mo. App. 199 (1887); *Tracy v. Pullman P. C. Co.*, 67 How. Pr. 154 (1884); *Welch v. Pullman P. C. Co.*, 16 Abb. Pr. N. S. 352 (1874); *Welding v. Wagner*, 1 City Ct. Rep. 66 (1878); *Sessions v. New York, L. E. & W. R. R.*, 78 Hun (N. Y.), 541, 29 N. Y. Supp. 628 (1894); *Pullman P. C. Co. v. Hatch*, 30 Tex. Civ. App. 303, 70 S. W. 771 (1902); *Stearn v. Pullman Car Co.*, 8 Ont. 171 (1885). *Contra*, *Pullman P. C. Co. v. Lowe*, 28 Neb. 239, 44 N. W. 226, 26 Am. St. Rep. 325, 6 L. R. A. 809 (1889); *Sise v. Pullman P. C. Co.*, 1 Quebec Super. 9 (*semble*).

lack by the car company of due and reasonable care, the company is liable because of the negligence.³

The question whether the company was negligent is for the jury.⁴

§ 382. Loss by theft of servant of the company.

The company is absolutely liable for goods of the passenger stolen by the porter or the conductor; for he is a servant who is employed by the company to protect the passenger against such a loss, and his theft is a failure to do his duty and makes the company liable.⁵

§ 383. For what goods the company is responsible.

The responsibility of the car company does not extend to all goods that might be brought into the car by the passenger. It is responsible for the clothing of the passenger, and for such jewels and ornaments as he may reasonably wear;⁶ for such small hand luggage as a passenger usually takes with him into the train,⁷ even though the contents were not to be used

³ Pullman P. C. Co. v. Martin, 92 Ga. 161, 18 S. E. 364 (1893); Woodruff S. & P. C. Co. v. Diehl, 84 Ind. 474, 43 Am. Rep. 102 (1882); Dawley v. Wagner P. C. Co., 169 Mass. 315, 47 N. E. 1024 (1897); Williams v. Webb, 27 N. Y. Misc. 508, 58 N. Y. Supp. 300 (1899); Falls River & M. Co. v. Pullman P. C. Co., 6 Ohio Dec. 85 (1896); Pullman Car Co. v. Gardner, 3 Penny. (Pa.) 78, 14 W. N. C. 17 (1883); Pullman P. C. Co. v. Pollock, 69 Tex. 120, 5 S. W. 814, 5 Am. St. Rep. 31 (1887); Stevenson v. Pullman P. C. Co., 26 S. W. 112 (Tex. Civ. App. 1894).

⁴ Pullman Car Co. v. Gardner, 3 Penny. (Pa.) 78, 14 W. N. C. 17 (1883); Hatch v. Pullman S. C. Co., 84 S. W. 246 (Tex. Civ. App. 1904).

⁵ Pullman's P. C. Co. v. Martin, 95 Ga. 314, 22 S. E. 700 (1894); Root v. New York S. C. Co., 28 Mo. App. 199 (1887); Morrow v. Pullman P. C. Co., 98 Mo. App. 351, 73 S. W. 281 (1903); Pullman P. C. Co. v. Gavin, 93 Tenn. 53, 23 S. W. 70, 42 Am. St. Rep. 902, 21 L. R. A. 289 (1893); Pullman P. C. Co. v. Matthews, 74 Tex. 654, 12 S. W. 744, 15 Am. St. Rep. 873 (1889).

⁶ Blum v. Southern P. P. C. Co., 1 Flip. 500, Fed. Cas. No. 1,574 (1876); Pullman P. C. Co. v. Adams, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898); Pullman's P. C. Co. v. Martin, 95 Ga. 314, 22 S. E. 700 (1894); Pullman's P. C. Co. v. Harvey, 101 Ga. 733, 28 S. E. 989 (1897); Pullman P. C. Co. v. Gaylord, 9 Ky. L. Rep. 58 (1887).

⁷ Blum v. Southern P. P. C. Co., 1 Flip. 500, Fed. Cas. No. 1,574 (1876);

on the journey, and the passenger also had with him a trunk in the baggage car;⁸ and for a reasonable amount of money for travelling expenses.⁹ For any money he may be carrying beyond such amount as may be reasonably necessary for travelling expenses the passenger takes the risk; if it is lost by negligence of the company, the owner must bear the loss.¹⁰ "The small fee paid for a berth constitutes compensation simply for the accommodation and the attendant watchfulness the company impliedly agrees to furnish; and though its responsibility rests solely in negligence, it should not be exposed to the hazard of false or exaggerated claims which designing men may attempt to enforce. This limitation of liability need work no hardship on the traveller as he can protect himself against loss by sending per express the money in excess of the requirements of his trip, or by availing himself of banking facilities, such as purchasing a draft on some banking house at the place of his destination."¹¹ What is a reasonable amount for travelling expenses is a question for the jury.¹² It has been held in one case that in the absence of evidence of what would constitute a reasonable amount, nominal damages only could be found;¹³ but it would seem that a minimum amount might be allowed on the general information of the jury.

Cooney v. Pullman P. C. Co., 121 Ala. 368, 25 So. 712, 50 L. R. A. 690 (1898); *Kates v. Pullman's P. C. Co.*, 95 Ga. 810, 23 S. E. 186 (1895); *Pullman's P. C. Co. v. Harvey*, 101 Ga. 733, 28 S. E. 989 (1897).

⁸ *Hampton v. Pullman P. C. Co.*, 42 Mo. App. 134 (1890).

⁹ *Blum v. Southern P. P. C. Co.*, 1 Flip. 500, Fed. Cas. No. 1,574 (1876); *Kates v. Pullman's P. C. Co.*, 95 Ga. 810, 23 S. E. 186 (1895); *Pullman P. C. Co. v. Gaylord*, 9 Ky. L. Rep. 58 (1887); *Root v. New York C. S. C. Co.*, 28 Mo. App. 199 (1887).

¹⁰ *Barrott v. Pullman's P. C. Co.*, 51 Fed. 796 (1892); *Hillis v. Chicago, R. I. & P. Ry.*, 72 Ia. 228, 33 N. W. 643 (1887); *Illinois C. R. R. v. Handy*, 63 Miss. 609, 56 Am. Rep. 846 (1886); *Wilson v. Baltimore & O. R. R.*, 32 Mo. App. 682 (1888); *Williams v. Webb*, 27 N. Y. Misc. 508, 58 N. Y. Supp. 300 (1899).

¹¹ *Levintritt, J.*, in *Williams v. Webb*, *supra*.

¹² *Williams v. Webb*, 27 N. Y. Misc. 508, 58 N. Y. Supp. 300 (1899).

¹³ *Wilson v. Baltimore & O. R. R.*, 32 Mo. App. 682 (1888).

In applying this general principle, recovery has been allowed for a valuable diamond pin worn in a scarf,¹⁴ and for three diamond rings worn on a passenger's finger;¹⁵ but not for a diamond ring, not worn because it was broken, but carried in the pocketbook for safe-keeping while being taken to a jeweller for repair.¹⁶ Recovery may be had for loss of a mileage book, but not of a pistol.¹⁷

§ 384. Amount of care required.

The amount of care required of the car company is what is reasonable under the circumstances; such care as may be reasonably necessary to secure the safety of the passenger and his goods.¹⁸ It is obvious that a higher degree of care is required at night, when the passenger is asleep, than in the daytime, when he is awake and able to care take of himself;¹⁹ it will therefore be advisable to consider separately the question of negligence by day and that of negligence at night.

§ 385. Negligence in the daytime.

During the daytime the company need take only the ordinary and customary steps for guarding the passenger's goods; the passenger himself must give them such care as is necessary in addition to what he has a right to expect from the company.²⁰

¹⁴ Pullman's P. C. Co. v. Harvey, 101 Ga. 733, 28 S. E. 989 (1897); Bevis v. Baltimore & O. R. R., 26 Mo. App. 19 (1887).

¹⁵ Pullman P. C. Co. v. Hunter, 107 Ky. 519, 54 S. W. 845, 47 L. R. A. 286 (1900).

¹⁶ Pullman P. C. Co. v. Adams, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898).

¹⁷ Cooney v. Pullman P. C. Co., 121 Ala. 368, 25 So. 712, 50 L. R. A. 690 (1898).

¹⁸ Pullman's P. C. Co. v. Harvey, 101 Ga. 733, 28 S. E. 989 (1897); Pullman's P. C. Co. v. Hall, 106 Ga. 765, 32 S. E. 923, 71 Am. St. Rep. 293, 44 L. R. A. 790 (1899); Belden v. Pullman P. C. Co., 43 S. W. 22 (Tex. Civ. App. 1897).

¹⁹ Pullman's P. C. Co. v. Hall, 106 Ga. 765, 32 S. E. 923, 71 Am. St. Rep. 293, 44 L. R. A. 790 (1899); Whicher v. Boston & A. R. R., 176 Mass. 275, 57 N. E. 601, 79 Am. St. Rep. 314 (1900).

²⁰ Efron v. Wagner P. C. Co., 59 Mo. App. 641 (1894).

The commonest allegation of negligence while the passenger is awake is connected with the porter leaving the car and standing outside at a station. Generally in such a case, where one door is locked or a porter stands at each end of the car outside, so as to prevent the entry of unauthorized persons, the precaution is sufficient;²¹ and indeed it is the porter's duty to stand outside, to assist passengers who wish to enter the car. But the circumstances may make this negligent; as, for instance, when the train is standing in a station in the evening, and the porter has left the passenger's goods near an open window,²² or in an unlocked drawing-room near an unlocked door,²³ or there were other circumstances of negligence.²⁴ But where the baggage is placed near an open window and is taken from the outside while the train is in motion, there is no negligence; such an event could hardly be foreseen and guarded against.²⁵

Where the porter helped the only passenger into the station with her luggage, and left one article of luggage behind in the unguarded car, the act was held negligent, and the company was held liable for the loss of the article.²⁶

§ 386. Care necessary at night.

During the night while the passenger is asleep the car company must exercise peculiar vigilance to protect the passenger and his goods from injury. This care is inherent in the nature of the business. "The invitation to make use of the bed carries with it an invitation to sleep, and an implied agreement to take reasonable care of the guest's effects while he

²¹ Efron v. Wagner P. C. Co., *supra*.

²² Dawley v. Wagner P. C. Co., 169 Mass. 315, 47 N. E. 1024 (1897).

²³ Arthur v. Pullman Co., 44 N. Y. Misc. 229, 88 N. Y. Supp. 552 (1904); Sise v. Pullman P. C. Co., 1 Quebec Super. 9 (1892).

²⁴ Pullman P. C. Co. v. Arents, 28 Tex. Civ. App. 71, 66 S. W. 329 (1902).

²⁵ Pullman's P. C. Co. v. Hall, 106 Ga. 765, 32 S. E. 923, 71 Am. St. Rep. 293, 44 L. R. A. 790 (1899).

²⁶ Voss v. Wagner P. C. Co., 16 Ind. App. 271, 43 N. E. 20, 44 N. E. 1010 (1896).

is in such a state that care, upon his own part, is impossible.”²⁷ As Mr. Chief Justice Morton said in *Lewis v. New York Sleeping Car Company*:²⁸ “A sleeping-car company holds itself out to the world as furnishing safe and comfortable cars, and, when it sells a ticket, it impliedly stipulates to do so. It invites passengers to pay for and make use of its cars for sleeping, all parties knowing that, during the greater part of the night, the passenger will be asleep, powerless to protect himself, or to guard his property. He cannot, like the guest of an inn, by locking the door, guard against danger. He has no right to take any such steps to protect himself in a sleeping car, but, by the necessity of the case, is dependent upon the owners and officers of the car to guard him and the property he has with him from danger from thieves or otherwise. The law raises the duty on the part of the car company to afford him this protection.”

§ 387. Continuous and effective watch.

The vigilance required of the company during the night is to keep a continuous and effective watch over the interior of the car, both to prevent the entrance of criminal intruders and to see that the occupants of the car do not steal from their fellow occupants.²⁹ It is enough to have one careful watch-

²⁷ *Brown, J., in Blum v. Southern P. P. C. Co.*, 1 Flip. 500, 505, Fed. Cas. No. 1,574 (1876).

²⁸ 143 Mass. 267, 273, 9 N. E. 617, 58 Am. Rep. 135 (1887).

²⁹ *Blum v. Southern P. P. C. Co.*, 1 Flip. 500, Fed. Cas. No. 1,574 (1876); *Pullman P. C. Co. v. Adams*, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898); *Kates v. Pullman's P. C. Co.*, 95 Ga. 810, 23 S. E. 186 (1895); *Woodruff S. & P. C. Co. v. Diehl*, 84 Ind. 474, 43 Am. Rep. 102 (1882); *Pullman P. C. Co. v. Hunter*, 107 Ky. 519, 54 S. W. 845, 47 L. R. A. 286 (1900); *Root v. New York C. S. C. Co.*, 28 Mo. App. 199 (1887); *Hampton v. Pullman P. C. Co.*, 42 Mo. App. 134 (1890); *Morrow v. Pullman P. C. Co.*, 98 Mo. App. 351, 73 S. W. 281 (1903); *Carpenter v. New York, N. H. & H. R. R.*, 124 N. Y. 53, 26 N. E. 277, 21 Am. St. Rep. 644 (1891); *Sessions v. New York, L. E. & W. R. R.*, 78 Hun (N. Y.), 541, 29 N. Y. Supp. 628 (1894); *Williams v. Webb*, 27 N. Y. Misc. 508, 58 N. Y. Supp. 300 (1899); *Pullman Car Co. v. Gardiner*, 3 Penny. (Pa.) 78, 18 W. N. C. 17 (1883); *Pullman P. C. Co. v. Gavin*, 93 Tenn. 53, 23 S. W. 70,

man at once;³⁰ but he must keep the whole aisle of the car constantly in sight, and it is neglect of due care for him to spend any part of his watch at a closet or in a room from which he cannot see the whole aisle,³¹ or to leave the car and stand outside it at a station,³² a thing which, as we have seen, is perfectly permissible for him to do in the daytime.

§388. Theft by another passenger.

The carrier should take due care at night to prevent theft by a passenger, so far as it can be prevented;³³ as, for instance, where the evidence shows that the thief must have stood for some time in the aisle while taking the goods.³⁴

In one case it was urged with great force that the company could not be held liable if there was nothing to call the porter's attention to the danger of theft. "One who avails himself of the comfort afforded on such cars does so with full knowledge of the fact that others, whose character the company cannot possibly know, may become fellow travellers with himself, and that the arrangement of the car into berths or sleeping chairs is such that he will necessarily, while asleep, be subjected to easy approach by any dishonest traveller in the same car. The risk of loss from such persons he assumes

42 Am. St. Rep. 902, 21 L. R. A. 298 (1893); Pullman P. C. Co. v. Hatch, 30 Tex. Civ. App. 303, 70 S. W. 771 (1902); Dargan v. Pullman P. C. Co., 2 Wills. (Tex.) App. § 691 (1885).

³⁰ Pullman P. C. Co. v. Gaylord, 9 Ky. L. Rep. 58 (1887).

³¹ Woodruff S. & P. C. Co. v. Diehl, 84 Ind. 474, 43 Am. Rep. 102 (1882); Carpenter v. New York, N. H. & H. R. R., 124 N. Y. 53, 26 N. E. 277, 21 Am. St. Rep. 644 (1891).

³² Pullman P. C. Co. v. Adams, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898); Pullman P. C. Co. v. Hunter, 107 Ky. 519, 54 S. W. 845, 47 L. R. A. 286 (1900); Carpenter v. New York, N. H. & H. R. R., 124 N. Y. 53, 26 N. E. 277, 21 Am. St. Rep. 644 (1891).

³³ Blum v. Southern P. P. C. Co., 1 Flip. 500, Fed. Cas. No. 1,574 (1876); Woodruff S. & P. C. Co. v. Diehl, 84 Ind. 474, 43 Am. Rep. 102 (1882); Pullman P. C. Co. v. Gavin, 93 Tenn. 53, 23 S. W. 70, 42 Am. St. Rep. 902, 21 L. R. A. 298 (1893).

³⁴ Bevis v. Baltimore & O. R. R., 26 Mo. App. 19 (1887); Falls River & M. Co. v. Pullman P. C. Co., 6 Ohio Dec. 85 (1896).

as an incident of his circumstances, and the company can only be made responsible by evidence of its neglect to keep that reasonable guard which its contract implies that it will.”³⁵ This reasoning, however, must be applied with caution. It is no doubt applicable fully to the case of a day journey; but at night reasonable watchfulness on the part of the company might be expected to prevent most such thefts.

§ 389. Preventing a passenger from carrying off another's luggage.

Where a passenger's luggage was carried away at a station during the night by another passenger, the company was held liable on the ground that it was negligent in the porter not to prevent it.³⁶ But it seems impossible in the ordinary case for the porter to identify every piece of luggage carried away by a passenger; and on this ground in another similar case the company was held not to be responsible.³⁷

§ 390. Limitation of liability.

The sleeping-car company often attempts by a notice posted in the car or printed on the berth check to limit its liability for loss of the passenger's goods through negligence. Of course such a notice will be of no avail unless brought home to the passenger.³⁸ But the car company being a public-service company, the limitation of liability is against public policy and void even if it is contained in a contract between the company and a passenger.³⁹

³⁵ Cooper, C. J., in *Illinois C. R. R. v. Handy*, 63 Miss. 609, 56 Am. Rep. 846 (1886).

³⁶ *Cooney v. Pullman P. C. Co.*, 121 Ala. 368, 25 So. 712, 50 L. R. A. 690 (1898).

³⁷ *Belden v. Pullman P. C. Co.*, 43 S. W. 22 (Tex. Civ. App. 1897).

³⁸ *Lewis v. New York S. C. Co.*, 143 Mass. 267, 9 N. E. 617, 58 Am. Rep. 135 (1887).

³⁹ *Stevenson v. Pullman P. C. Co.*, 26 S. W. 112 (Tex. Civ. App. 1894). In *Louisville N. & G. S. R. R. v. Katzenberger*, 16 Lea (Tenn.), 380, 1 S. W. 44, 57 Am. Rep. 232 (1886), it was held that such an exemption could not affect the liability of the railroad company, and no reason appears for any distinction between the railroad company and the sleeping-car company.

§ 391. Contributory negligence.

The passenger's recovery may be barred by the fact that his own negligence contributed to the loss.⁴⁰ So if the passenger on going to sleep left his goods in an unsafe place he cannot recover for their loss,⁴¹ though he cannot be expected to find at his peril the safest place.⁴² Contributory negligence is no defence against an intentional act of the company or its servant, as, for instance, theft by a porter;⁴³ nor is a passenger barred of recovery by the negligence of his travelling companion.⁴⁴

It is contributory negligence for the passenger to leave a pocketbook or money in his berth while he goes to the toilet room or steps outside the car;⁴⁵ but of course it is proper to leave a valise, overcoat, or other article which cannot properly be taken with him.⁴⁶ Leaving a bag or other article on a berth in the daytime while one goes to the smoking room or to dinner has been held evidence of contributory negligence,⁴⁷ and under some circumstances the negligence might be obvious;⁴⁸ but since it is a regular and well-known custom of

⁴⁰ *Blum v. Southern P. P. C. Co.*, 1 Flip. 500, Fed. Cas. No. 1,574 (1876); *Pullman P. C. Co. v. Adams*, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898); *Kates v. Pullman's P. C. Co.*, 95 Ga. 810, 23 S. E. 186 (1895).

⁴¹ *Pullman's P. C. Co. v. Harvey*, 101 Ga. 733, 28 S. E. 989 (1897).

⁴² *Pullman P. C. Co. v. Adams*, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898).

⁴³ *Morrow v. Pullman P. C. Co.*, 98 Mo. App. 351, 73 S. W. 281 (1903); *Pullman P. C. Co. v. Matthews*, 74 Tex. 654, 12 S. W. 744, 15 Am. St. Rep. 873 (1889).

⁴⁴ *Pullman P. C. Co. v. Adams*, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898).

⁴⁵ *Root v. New York C. S. C. Co.*, 28 Mo. App. 199 (1887); *Chamberlain v. Pullman P. C. Co.*, 55 Mo. App. 474 (1893); *Pullman P. C. Co. v. Matthews*, 74 Tex. 654, 12 S. W. 744, 15 Am. St. Rep. 873 (1889).

⁴⁶ *Root v. New York C. S. C. Co.*, 28 Mo. App. 199 (1887).

⁴⁷ *Dawley v. Wagner P. C. Co.*, 169 Mass. 315, 47 N. E. 1024 (1897); *Whicher v. Boston & A. R. R.*, 176 Mass. 275, 57 N. E. 601, 79 Am. St. Rep. 314 (1900); *Pullman P. C. Co. v. Arents*, 28 Tex. Civ. App. 71, 66 S. W. 329 (1902).

⁴⁸ *Whitney v. Pullman's P. C. Co.*, 143 Mass. 243, 9 N. E. 619 (1887).

passengers to leave articles in a berth while in the smoking room or the dining car, it seems not quite accurate to speak of the act under ordinary circumstances as negligent. It would better be treated as an assumption by the passenger of the risk of any loss occurring without the negligence of the company.⁴⁹

§ 392. Evidence of negligence.

The mere fact of loss of the property without any explanation of the cause is not evidence that it was lost by the negligence of the company.⁵⁰ The fact that two passengers in the same car lost property on the same night is, however, evidence of negligence;⁵¹ so is the fact that the porter was seen asleep.⁵²

§ 393. Burden of proof.

The burden of proof is upon the plaintiff to prove the negligence which is the basis of his action.⁵³ It is said, to be sure, in Georgia, that after loss has been proved (at least when the loss occurred at night) the burden of disproving negligence is on the company, since it is peculiarly within its power to produce such evidence;⁵⁴ but the court probably had in mind merely the burden of introducing evidence. Such a burden

⁴⁹ *Efron v. Wagner P. C. Co.*, 59 Mo. App. 641 (1894).

⁵⁰ *Whicher v. Boston & A. R. R.*, 176 Mass. 275, 57 N. E. 601, 79 Am. St. Rep. 314 (1900); *Carpenter v. New York, N. H. & H. R. R.*, 124 N. Y. 53, 26 N. E. 277, 21 Am. St. Rep. 644, 11 L. R. A. 759 (1891); *Tracy v. Pullman P. C. Co.*, 67 How. Pr. 154 (1884); *Pullman P. C. Co. v. Hatch*, 30 Tex. Civ. App. 303, 70 S. W. 771 (1902); *Stearn v. Pullman Car Co.*, 8 Ont. 171 (1885).

⁵¹ *Lewis v. New York S. C. Co.*, 143 Mass. 267, 9 N. E. 617, 58 Am. Rep. 135 (1887); *Pullman Car Co. v. Gardner*, 3 Penny. (Pa.) 78, 14 W. N. C. 17 (1883).

⁵² *Pullman P. C. Co. v. Adams*, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898); *Lewis v. New York S. C. Co.*, 143 Mass. 267, 9 N. E. 617, 58 Am. Rep. 135 (1887).

⁵³ *Sessions v. New York, L. E. & W. R. R.*, 78 Hun (N. Y.), 541, 29 N. Y. Supp. 628 (1894).

⁵⁴ *Kates v. Pullman's P. C. Co.*, 95 Ga. 810, 23 S. E. 186 (1895); *Pullman's P. C. Co. v. Harvey*, 101 Ga. 733, 28 S. E. 989 (1897).

might well, under these circumstances, rest upon the company, which could meet it by testimony establishing the carefulness of the watch;⁵⁵ but the evidence being in, the plaintiff should satisfy the jury of the existence of negligence. And in most jurisdictions the doctrine that unexplained loss is not evidence of negligence is opposed to the view taken in the Georgia cases, even as just explained.

The burden of introducing evidence of contributory negligence of the passenger is on the company.⁵⁶ In Missouri contributory negligence is regarded as an affirmative defence, and the burden is therefore on the company not only to introduce evidence, but also to prove it.⁵⁷

§ 394. Care of property left behind by a passenger.

When a passenger leaves the train, leaving behind him some article of property, the company cannot be held to any duty of care in guarding the property until it is found by some servant of the company;⁵⁸ but when it is so found, the company must take reasonable care of it, and do what it reasonably can towards restoring it to the owner.⁵⁹ Where, however, the passenger is without proper warning hurried out of his car into another, without being given time to collect all his effects, the company is responsible for any property which he leaves behind;⁶⁰ and this is still more clearly the case where his goods are changed by the porter into another car in his absence and without his knowledge.⁶¹

§ 395. Company liable for goods as bailee.

While in the ordinary case the passenger remains in control and possession of his baggage, the company may through its

⁵⁵ Pullman P. C. Co. v. Freudenstein, 3 Col. App. 540, 34 Pac. 578 (1893).

⁵⁶ Pullman P. C. Co. v. Adams, 120 Ala. 581, 24 So. 921, 74 Am. St. Rep. 53, 45 L. R. A. 767 (1898).

⁵⁷ Florida v. Pullman P. C. Co., 37 Mo. App. 598 (1889).

⁵⁸ Illinois C. R. R. v. Handy, 63 Miss. 609, 56 Am. Rep. 846 (1886).

⁵⁹ Kates v. Pullman's P. C. Co., 95 Ga. 810, 23 S. E. 186 (1895).

⁶⁰ Kates v. Pullman's P. C. Co., *supra*.

⁶¹ Kinsley v. Lake Shore R. R., 125 Mass. 54, 28 Am. Rep. 200 (1878).

porter assume the possession; and the company will then be liable, like a common carrier, for the safety of the goods. This is the case where the porter undertakes to remove the goods from the car, either with the consent of the owner⁶² or without his knowledge.⁶³ This principle was in one decision improperly extended to a case where the porter placed the valise of a passenger under his berth while he was asleep.⁶⁴

⁶² *Voss v. Wagner P. C. Co.*, 16 Ind. App. 271, 43 N. E. 20, 44 N. E. 1010 (1896).

⁶³ *Kinsley v. Lake Shore R. R.*, 125 Mass. 54, 28 Am. Rep. 200 (1878).

⁶⁴ *Nashville C. & S. L. R. R. v. Lillie*, 112 Tenn. 331, 78 S. W. 1055 (1904).

CHAPTER XXX.

ACTIONS, DAMAGES AND THE CONFLICT OF LAWS.

§ 401. Form of action.

402. Measure of damages.

| § 403. Conflict of laws.

§ 401. Form of action.

While the car company comes into contractual relations with its passengers, and may be sued for breach of contract,¹ it owes to every passenger enjoying or demanding its services a duty imposed by the law, not by any contract, and for breach of this duty may be sued in an action sounding in tort.² In this respect the case of the car company is like that of the innkeeper.³

Action may be maintained by a passenger for the loss of money in his possession, though he was merely a bailee of it.⁴

§ 402. Measure of damages.

For a personal injury to a passenger he is entitled to compensation for all his bodily injury, both present and future, immediate and consequential,⁵ and for damages for mental suffering if it was inflicted,⁶ but not to exemplary damages, or damages exceeding the actual loss, unless there were cir-

¹ Pullman P. C. Co. v. Taylor, 65 Ind. 153, 32 Am. Rep. 57 (1879).

² Nevin v. Pullman P. C. Co., 106 Ill. 222, 46 Am. Rep. 688 (1883); Pullman P. C. Co. v. Lawrence, 74 Miss. 782, 22 So. 53 (1897); Pullman P. C. Co. v. Booth (Tex. Civ. App.), 28 S. W. 719 (1894).

³ *Ante*, § 281.

⁴ Pullman P. C. Co. v. Gavin, 93 Tenn. 53, 23 S. W. 70, 42 Am. St. Rep. 902, 21 L. A. R. 298 (1893).

⁵ Hughes v. Pullman P. C. Co., 74 Fed. 499 (1896).

⁶ Campbell v. Pullman P. C. Co., 42 Fed. 484 (1890); Pullman P. C. Co. v. Booth, 28 S. W. 719 (Tex. Civ. App. 1894).

cumstances of malice or insult.⁷ When a passenger is wrongfully expelled from a sleeping car, the measure of damages is the amount of discomfort suffered from completing his journey in an ordinary car.⁸ If the passenger is in a delicate state of health, and the expulsion aggravated the trouble and caused illness, the company is liable in damages for the illness.⁹

§ 403. Conflict of Laws.

The action against a sleeping-car company being an action *ex delicto*, the law of the place where the injury was inflicted determines the nature and extent of the injury,¹⁰ as, for instance, whether exemplary damages may be recovered.¹¹ The law of the foreign State will be presumed to be the same as that of the forum, in the absence of evidence; and this being a question of modern commercial law which would probably be determined in the same way in all States, it was presumed that the law of Mexico was the same as that of Texas, though one of the States was governed by the Civil Law and the other by the Common Law.¹²

⁷ *Lemon v. Pullman P. C. Co.*, 52 Fed. 262 (1887); *Pullman P. C. Co. v. Reed*, 75 Ill. 125, 20 Am. Rep. 232 (1874); *Missouri P. Ry. v. Groesbeck*, 24 S. W. 702 (Tex. Civ. App. 1894); *Norfolk & W. R. R. v. Lipscomb*, 90 Va. 137, 17 S. E. 809, 20 L. R. A. 817 (1893).

⁸ *Pullman P. C. Co. v. Reed*, 75 Ill. 125, 20 Am. Rep. 232 (1874); *Missouri Pac. Ry. v. Groesbeck*, 24 S. W. 702 (Tex. Civ. App. 1894).

⁹ *Mann B. C. Co. v. Dupré*, 54 Fed. 646 (1893). *Pullman P. C. Co. v. Barker*, 4 Col. 344, 34 Am. Rep. 89 (1878), *contra*, is not to be commended.

¹⁰ *Pullman P. C. Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897); *Stevenson v. Pullman P. C. Co.*, 26 S. W. 112 (Tex. Civ. App. 1894).

¹¹ *Pullman P. C. Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897).

¹² *Stevenson v. Pullman P. C. Co.*, 26 S. W. 112 (Tex. Civ. App. 1894), 32 S. W. 335 (Tex. Civ. App. 1895).

TITLE VIII.

STATUTES AFFECTING INNKEEPERS.

CHAPTER XXXI.

LIMITATIONS OF INNKEEPERS' LIABILITY.

Topic I. General Principles.	Topic III. Deposit of Goods with the Innkeeper.
§ 411. General statutory limitations of liability.	§ 423. What constitutes a sufficient deposit.
412. Non-compliance by guest not causing loss.	424. Deposit must be for safe keeping.
413. Non-compliance by innkeeper.	425. Effect of deposit.
414. Negligence of innkeeper.	426. Waiver of deposit.
415. Effect of statute on responsibility for merchandise.	427. During what time the limitation is in effect.
416. Burden of proof.	Topic IV. What goods must be deposited with the innkeeper.
Topic II. The Posting of Notice.	428. Whether all goods must be deposited.
417. Requirements of statute must be exactly complied with.	429. Statutes expressly excepting goods needed in guest's room.
418. Printing notice on register not sufficient.	430. Statutes expressly enumerating classes of goods to be deposited.
419. Notice erroneously printed.	431. Deposit of watch.
420. Actual notice of regulation on part of guest: New York rule.	432. Deposit of article needed for immediate use.
421. Actual notice: general rule.	
422. Actual notice: what is sufficient to constitute.	

Topic I. *General Principles.*§ 411. **General statutory limitations of liability.**

In the year 1855 both New York and Pennsylvania passed acts permitting an innkeeper who had provided a safe for the protection of his guest's valuables to protect himself from lia-

bility for valuables not deposited with him by the guest by giving proper notice. Other States soon passed similar statutes, and at the present time such statutes are practically universal.

§ 412. Non-compliance by guest not causing loss.

Where the guest is required, by a notice posted under authority of the statute, to lock his door, or to do some similar act, the guest who after noncompliance with the terms of the notice loses goods from his room is not barred from recovery by his failure to follow the regulation unless such failure was the cause of the loss. Thus, where a guest was required to lock his door at night, and he failed to do so, and his goods were stolen at night by another guest placed in the room, against the plaintiff's remonstrance, by the innkeeper, it was held that the guest might recover compensation for his loss.¹ So where the notice as posted required the guest before going out to lock the door and leave the key at the office, and the plaintiff, a guest, locked the door and kept the key in his pocket, and goods were stolen from the room, he was held entitled to recover in spite of his failure to comply with the terms of the notice, since the loss was not caused by his failure to leave the key at the office.² This case, however, turned on the precise language of the statute, which exonerates the innkeeper only if the loss is attributable to the guest's non-compliance with the terms of the notice.

§ 413. Non-compliance by innkeeper.

An innkeeper who fails to provide a safe in his office, as required by the statute, is responsible as at common law for goods of the guest not deposited with him; he can take no advantage of the statute.³ The same thing is true of an innkeeper who fails to post the notice required by the statute.⁴

¹ *Gile v. Libby*, 36 Barb. (N. Y.) 70 (1861).

² *Burbank v. Chapin*, 140 Mass. 123, 2 N. E. 934 (1885).

³ *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882).

⁴ *Spicer v. Bacon*, 2 Ex. D. 463, 46 L. J. Ex. 713, 36 L. T. 896, 25 W. R.

§ 414. Negligence of innkeeper.

A common exception to the limitation of the innkeeper's liability is of cases where the loss happens through the act or negligence of the innkeeper or his servant. This has been held in England to mean cases where the loss occurs *wholly* because of such act or negligence.⁵ In New York it has been held that the negligence intended by the statute is that which precedes, induces, or facilitates the loss, and not negligence afterwards.⁶

Where a guest at an inn failed to deposit jewels with the innkeeper, and they were stolen from his room, it was held that the fact that the defendants' servants did not cause the premises to be searched upon the discovery of a poker and a knife on the bed in the plaintiff's room from which the jewelry was stolen was no evidence of negligence on the part of the defendants' servants.⁷

§ 415. Effect of statute on responsibility for merchandise.

As has been seen ⁸ the innkeeper is not required at common law to permit the use of his inn as a shop for the display or sale of merchandise, and he is therefore not required to receive goods brought to the inn for such a purpose. The statute limiting the innkeeper's liability was not intended to increase his obligation in this respect. For instance, the requirement that he shall keep a safe does not compel him to have a safe large enough to receive any merchandise, no matter how bulky or valuable it may be, which a guest may choose to bring into the inn.⁹

840 (1877); *Beale v. Posey*, 72 Ala. 323 (1882); *Lanier v. Youngblood*, 73 Ala. 587 (1883); *Murchison v. Sergent*, 69 Ga. 206 (1882); *Olson v. Crossman*, 31 Minn. 222, 17 N. W. 375 (1883); *Batterson v. Vogel*, 8 Mo. App. 24 (1879); *Lima v. Dwinelle*, 7 Alb. L. J. 44 (N. Y. 1873).

⁵ *Medewar v. Grand Hotel Co.*, [1891] 2 Q. B. 11, 60 L. J. Q. B. 209, 64 L. T. 851, 55 J. P. 614.

⁶ *Faucett v. Nichols*, 4 Thomp. & C. (N. Y.) 597 (1874).

⁷ *Marchioness of Huntly v. Bedford Hotel Co.*, 56 J. P. 53 (1891).

⁸ *Ante*, § 150.

⁹ *Meyers v. Cottrill*, 5 Biss. 465, Fed. Cas. No. 9,985 (1873).

The common law on this point is, however, modified by statute in Missouri,¹⁰ where it is provided that an innkeeper is not liable for loss of merchandise for sale or sample belonging to the guest, from the guest's room, unless written notice is given to the innkeeper that the guest has such merchandise. Under this statute the innkeeper was held not to be liable, if the guest has failed to give such notice, even though the innkeeper in fact knew the nature of the guest's business, and that he had such goods for sale in his room. In this case the liability is created, not limited, by the statute, and the provisions of the act must be expressly followed in order to hold the innkeeper to a statutory liability.¹¹ Mr. Justice Harlan said: "Since the innkeeper is not ordinarily bound to the same care for the safety of goods, in the possession of a guest for the purpose merely of being exhibited or sold, as for articles carried by the latter for his comfort or convenience as a traveller, the statute changed the rule so as to make his responsibility the same in both cases: provided, in the former case, the person received as a guest gives written notice that he has merchandise for sale or sample in his possession in the hotel, leaving the innkeeper, upon such notice, to elect whether he will permit the guest to remain in the hotel with such merchandise for sale or sample. Notice in this form, when the guest is permitted to remain in the hotel with merchandise in his possession 'for sale or sample,' is made by the statute evidence that the innkeeper has assumed responsibility for the safety of such merchandise, to the full extent that he is bound by the settled principles of law for the safety of the baggage or other articles brought by guests into the hotels."

§ 416. Burden of proof.

Whether the burden of bringing the case within the statute lies on the innkeeper or the guest depends entirely upon the

¹⁰ *Post*, Appendix XXIII, § 4.

¹¹ *Fisher v. Kelsey*, 121 U. S. 383, 30 L. Ed. 930, 7 Sup. Ct. 929 (1887).

form of the statute and the nature of the case. The burden of proving compliance with all the forms required by the statute, such as posting notices, is certainly on the innkeeper, and he must affirmatively show such compliance.¹² Compliance with the requirements of the act having been shown by the innkeeper, the burden may or may not be upon him to show further the circumstances enumerated in the act. In some statutes the innkeeper is liable only for a loss which happens through the act or neglect of himself or his servants. In such a case the burden is upon the guest to prove that the loss happened through such act or neglect.¹³ But under a statute exempting an innkeeper from liability for the loss by fire of property of a guest in a barn or outbuilding, where it shall appear that the loss was the work of an incendiary, and occurred without negligence on his part, the burden is upon the innkeeper to show that the fire was an incendiary one, and to show absence of negligence on his part.¹⁴ And under a statute by which an innkeeper is relieved when the loss is attributable to the guest's negligence or non-compliance with reasonable regulations of the inn which are brought to his notice, it is for the innkeeper to show that the non-compliance with a regulation was the cause of the loss.¹⁵

Topic II. *The Posting of Notice.*

§ 417. Requirements of statute must be exactly complied with.

The statute limiting the innkeeper's liability always provides for the posting of notice of the limitation. Such provisions of the statute must be expressly complied with. Thus, where the notice is to be printed "in ordinary-sized plain English type" printing it in very small type is not enough,

¹² Myers v. Cottrill, Fed. Cas. No. 9,985, 5 Biss. 465 (1873); Chamberlain v. West, 37 Minn. 54, 33 N. W. 114 (1887).

¹³ Elcox v. Hill, 98 U. S. 218, 25 L. Ed. 103 (1878); Becker v. Haynes, 29 Fed. 441 (1887); Burnham v. Young, 72 Me. 273 (1881).

¹⁴ Faucett v. Nichols, 64 N. Y. 377 (1876).

¹⁵ Burbank v. Chapin, 140 Mass. 123, 2 N. E. 934 (1885).

even if the guest could just as easily have read it;¹⁶ and where notice is to be posted on the doors of the chambers, the notice must be posted on the door of every room occupied by guests.¹⁷

§ 418. Printing notice on register not sufficient.

Where the statute requires that notice should be posted, it is not enough to print the notice at the head of the register in which a guest signs his name. Such information as to the statute is not a sufficient compliance with the terms of the statute, and does not exempt the innkeeper from liability under the statute.¹⁸ And even if the statute makes no particular provision as to the method of posting the notice, as in Georgia,¹⁹ it is not enough to print the notice at the head of each page of the register. In a case arising under the Georgia statute, it appeared that the innkeeper provided a safe in his office, and printed at the top of the page in the register which the guest signed a notice that "money and other valuables must be left at the office and checks received for them." The guest lost money from his room, and sued the innkeeper; and the trial court allowed the register to be produced in order to prove a posting of notice under the statute. The Supreme Court held this to be erroneous. Mr. Chief Justice Jackson said on this point: "Does one man in a hundred, when he registers his name, read the printed heading of the register? What sort of publication is it to guests? In no view we can take of our statutes, their reason and spirit, is it such a publication to the guest as the law requires, and if it were to transient people stopping for meals and pulling off overcoats and laying down valises, it is not to guests who take rooms at the hotel. We think it, however, not sufficient under our statutes to bind

¹⁶ *Porter v. Gilkey*, 57 Mo. 235 (1874); see *Batterson v. Vogel*, 8 Mo. App. 24 (1879).

¹⁷ *Beale v. Posey*, 72 Ala. 323 (1882); *Lanier v. Youngblood*, 73 Ala. 587 (1883); *Lima v. Dwinelle*, 7 Alb. L. J. 44 (N. Y. 1873).

¹⁸ *Olson v. Crossman*, 31 Minn. 222, 17 N. W. 375 (1883); *Batterson v. Vogel*, 8 Mo. App. 24 (1879).

¹⁹ *Post*, Appendix IX, § 7.

anybody. For these reasons we think the court erred in regard to the admissibility of this register with its heading.”²⁰

Nor will the notice thus printed at the head of the page absolve the innkeeper, on the ground that it forms the basis of a special contract between the innkeeper and the guest, in the absence of affirmative evidence that the guest saw and assented to it; nor, it may be added, unless a consideration can be shown. On this point Mr. Chief Justice Gilfillan said in the case of *Olson v. Crossman*:²¹ “A notice at the head of the register of guests, or a verbal notice to the guest, not being such notice as the statute prescribes, is of no avail unless the guest consents to it, so as to constitute a contract limiting the innkeeper’s liability. Of course, it would not amount to such a contract unless the guest’s attention was called to it, so that he might be presumed to have understood and assented to it.”²²

§419. Notice erroneously printed.

A material error in the printed notice will prevent the innkeeper from taking advantage of it. Thus, in the English case of *Spicer v. Bacon*²³ the innkeeper had posted a notice in intended compliance with the statute. The statute provided²⁴ that no innkeeper should be liable for loss of or injury to the goods of his guest to a greater extent than thirty pounds, with certain exceptions, “unless such goods or property shall have been stolen, lost, or injured, through the willful act, default, or neglect of such innkeeper or any servant in his employ;”²⁵ and it was further provided that a copy of this

²⁰ *Murchison v. Sergeant*, 69 Ga. 206 (1882).

²¹ 31 Minn. 222, 17 N. W. 375 (1883).

²² And see to the same effect *Marchioness of Huntley v. Bedford Hotel Co.*, 56 J. P. 53 (Eng. 1891); *Burbank v. Chapin*, 140 Mass. 123, 2 N. E. 934 (1885); *Kellogg v. Sweeney*, 1 Lans. (N. Y.) 397 (1869); *Bernstein v. Sweeney*, 33 N. Y. Super. Ct. 271 (1871).

²³ 2 Ex. D. 463, 46 L. J. Ex. 713, 36 L. T. 896, 25 W. R. 840 (1877).

²⁴ 26 & 27 Vict., ch. 41, § 1.

²⁵ The word “willful” in the statute qualifies the word “act” only, not “default or neglect.” *Squire v. Wheeler*, 16 L. T. 93 (1867).

provision printed in plain type should be exhibited in a conspicuous part of the hall or entrance to the inn. The innkeeper inadvertently omitted the word "act" from the sentence quoted, so that the clause read in the notice "unless such goods . . . shall have been stolen . . . through the willful default or neglect of such innkeeper," etc. This notice was held not to protect the innkeeper under the act. Lord Chancellor Cairns said: "I have not the least doubt that there was a *bona fide* intention on the part of the defendant to give a notice which was an exact compliance with the statute, and that the omission which was relied upon has occurred entirely *per incuriam*; but it has occurred, and we must deal with the notice as it stands. Now at first it rather appeared that it might be looked upon as if there had been an omission of a word not material to the sense, and I certainly should not be prepared to hold that, if a paper had been put up in an inn which was intended in good faith to be a copy of the section of the statute, and that all that could be said of it in opposition to its being a copy was that a word or two words which were not material to the sense and to the operation of the statute had been omitted, the paper had ceased to be, or failed to be, a copy within the meaning of the statute. But . . . the omission here entirely alters the operation of the section of the statute. The notice is, therefore, not a notice stating the law in the way the first section of the statute states it. I feel obliged, I repeat reluctantly, to hold that the claim for protection under the statute fails, and that the case must be dealt with as if the statute never had passed." And Chief Justice Cockburn said: "I quite concur in thinking that if this were a mere clerical error we might hold the notice sufficient to meet the requirement of the Act, as still being a copy; but when we find an omission of that which is material, with a view to a clear and distinct statement of the rights and liabilities of the parties respectively we have an omission which is far beyond a mere clerical error. It is an omission of a substantial part of the notice. When we have an omission of

a material and really substantial part of the notice required by statute, I cannot think it a copy sufficient to satisfy the requirements of the Act."

§ 420. Actual notice of regulation on part of guest: New York rule.

In a leading case in New York it appeared that the plaintiff, a guest at the defendant's inn, lost a large sum of money from his room. The innkeeper had not posted notices in the rooms of the guests, as required by the statute; but a waiter informed the guest that there was a safe in the office provided for the guests' valuables, and that they should be deposited there. In an action by the guest for loss of his money, the Superior Court of the City of New York held that the action was barred by the statute.²⁶ Mr. Chief Justice Duer said: "The only question that remains upon the special finding of the jury, is whether the defendants are to be held liable for the loss that is claimed, upon the sole ground that the notice required by the statute was not at the time of the loss posted up in the bedroom of the plaintiff, although he had actual notice of all the facts that a notice so posted up would have contained. Unless the affirmative of this proposition is true the plaintiff cannot be entitled to recover; that it is true we find it impossible to believe. We shall admit that the notice given by the waiter to the plaintiff would not have been sufficient to discharge the defendants at common law, notwithstanding the charge of the judge and the finding of the jury, upon the question of negligence, but that the notice was rendered sufficient by the act of the legislature, not indeed by its terms, but by its reasonable, and as it seems to us even necessary, construction, we do not at all doubt. The notice which the statute requires is merely constructive, since it is evident that a notice posted up in the room of a guest may wholly escape his attention, yet he is not permitted to aver his ignorance, but is bound by that presumption of his knowledge

²⁶ *Purvis v. Coleman*, 1 Bosw. (N. Y.) 321 (1857).

which the statute raises. When the facts raising the presumption are proved, his recovery is barred. It is true, the statute is silent as to the effect of actual notice, but we cannot believe that the legislature intended that a greater effect should be attributed to the presumed knowledge of a guest than to its actual proof—that while the presumption bars his recovery, the proof must be rejected or disregarded. Such a construction of the intention of the legislature would be most unreasonable, and although that which we believe to have been its true intention is not expressed, we cannot but think that it is necessarily involved in that which is expressed, and the meaning of the statute we hold to be,—that the knowledge of a guest who has failed to deposit his money, or jewelry, in a safe, that he knew to have been provided, shall defeat his claim for a subsequent loss, and that such is its consequence, whether the knowledge be established by direct and positive, or merely presumptive, evidence. Nor do we suppose that such a construction is confined to the statute under consideration. The rule, we think, may be stated as universal, that when a statute declares that certain acts shall create a presumption of knowledge, which the party to be affected by the knowledge is not permitted to repel, it declares by facts to which the presumption relates, is just as admissible in proof, and when proved is equally conclusive. Of the application of the rule, the actual knowledge of a subsequent purchaser of an unrecorded deed or mortgage is an example. If it be said that such a purchaser is not a purchaser in good faith, the reply is that there is a similar want of good faith in a guest who, with a full knowledge that a safe had been provided for the purpose for which it was provided, seeks to deprive an innkeeper of the protection that the legislature meant to afford him upon the sole ground, that the terms of the statute had not been literally complied with. The notice given to the plaintiff in this case, the jury have in effect found, contained all the information that a notice posted up in his room, if read, would have conveyed to him, and we are clearly of opinion, that in

disregarding such a notice, the plaintiff acted at his peril, and took upon himself the risk of any subsequent loss."

The Court of Appeals affirmed the decision of the Superior Court,²⁷ saying that the actual notice was "far more satisfactory and ample than the constructive one required by the statute," and that the object and purpose of the statute had been "more than complied with." The Chief Justice and two other judges dissented.

§ 421. Actual notice: general rule.

This decision has been much criticised in later cases, and several courts have declined to follow it. Thus, in *Batterson v. Vogel*²⁸ the innkeeper who had not posted a notice in the guest's room, as required by the act, was not absolved though it appeared that the guest had read a copy of the act on the register; the court saying that the act did not provide that actual knowledge of the provisions of the act should take the place of posting. And this seems to be the better view. The statute prescribes the exact manner in which the innkeeper, without any agreement on the part of the guest, may escape his common-law liability. It is in derogation of the common law, and should be strictly construed against the innkeeper, who is attempting in reliance upon it, to protect himself against an obligation towards his guest which the common law would create. The statute makes no provision for an actual notice, and a strict construction of the statute does not permit the innkeeper who has failed to comply with the terms of it to assert the actual notice of the guest as a sufficient substitute for the statutory requirement.²⁹ Indeed, it is not accurate to say that the statute assumes constructive notice on the part of the guest as the result of posting the notice. It is more exact to say that, without regard to knowledge on the part of

²⁷ *Purvis v. Coleman*, 21 N. Y. 111 (1860).

²⁸ 8 Mo. App. 24 (1879).

²⁹ *Lanier v. Youngblood*, 73 Ala. 587, 594 (1883); *Porter v. Gilkey*, 57 Mo. 235 (1874).

the guest, the statute extends a privilege to the innkeeper upon an express condition; which condition he must perform if he would avail himself of the privilege.

§ 422. Actual notice: what is sufficient to constitute.

If actual notice can take the place of the posting of printed notices called for by the statute, either by securing to the innkeeper the protection of the statute, or by forming the basis of a contract limiting his liability, or by making it an act of negligence in the guest to fail to deposit his valuables with the innkeeper, the notice must have been given to the guest at the time of his present visit to the inn, or at least within a reasonable time previously, to be so found by the jury;³⁰ and notice actually given to the guest one year before his present visit is not enough to relieve the innkeeper from liability upon any ground.³¹

Topic III. *Deposit of Goods with the Innkeeper.*

§ 423. What constitutes a sufficient deposit.

It may be assumed that when a guest places a package in the hands of the servant who is authorized to accept deposits, this will constitute a sufficient deposit under the terms of the statute. It is not necessary to give detailed notice to the innkeeper of the nature of the package, nor to state explicitly that the delivery is upon deposit for safe-keeping. In the case of *Bradner v. Mullen*³² it appeared that defendant was proprietor of an inn, and the plaintiff was then a guest at the inn; that on the evening of that day the plaintiff walked in behind the desk in the office and in the presence of an employee of the inn and the person apparently in charge of the office, hung up his overcoat on one of the hooks therein used for that purpose by guests; that the management usually gave checks for

³⁰ *Shultz v. Wall*, 134 Pa. 262, 19 Atl. 742, 26 Wkly. Notes Cas. 51, 19 Am. St. Rep. 686, 8 L. R. A. 97 (1890).

³¹ *Lanier v. Youngblood*, 73 Ala. 587 (1883).

³² 27 N. Y. Misc. 479, 59 N. Y. Supp. 178 (1899).

umbrellas, but none for overcoats unless asked, and the plaintiff in placing his coat behind the desk in the office placed it upon hooks placed there for the purpose of hanging coats and according to the custom of the guests. The coat was lost. The court held that the innkeeper was liable, on the ground that there had been a sufficient deposit of the overcoat under the statute. The guest put it where he had been invited to place it by the defendant. It is true the innkeeper generally gave checks; but this is not required by the statute, and is rather for the convenience of the innkeeper than for the security of the guest's property.

This decision is to be contrasted with the Irish case of *O'Connor v. Grand International Hotel Company*.³³ In that case it appeared that a guest gave a parcel to the innkeeper saying, "Keep that for me." It was lost, and the guest sued the innkeeper for the value. The package contained jewels worth two hundred pounds. The court held that under the statute the innkeeper's liability was limited to thirty pounds, since when making the deposit the guest did not inform the innkeeper, in a reasonable and intelligible manner, that the deposit was for the safe custody of the article. This decision is not to be commended.

§ 424. Deposit must be for safe keeping.

But while it seems not necessary expressly to state to the innkeeper that the goods are valuable, or are deposited under the provisions of the statute, in order to make the innkeeper responsible, it is nevertheless necessary that they should be placed with him under such circumstances as to indicate that they were deposited for safe-keeping. Where the deposit is merely for the temporary convenience of the guest, who means to keep the goods under his own care, the provisions of the act are not complied with. Thus, in *Horton v. Terminal Hotel and Arcade Company* ³⁴ a guest, before going to the adjacent res-

³³ [1898] 2 Ir. 92.

³⁴ 114 Mo. App. 357, 89 S. W. 363 (1905).

taurant to get his supper, handed a box containing a locket to the clerk and requested him to keep it for him, but gave the clerk no information concerning the contents of the box. The plaintiff intended to get the locket after supper and keep it in his room during the night, but forgot to call for it and never thought of it again until midnight, after he had retired. When he remembered leaving it with the clerk, he rang for a bell boy and sent him to get the locket, at the same time showing the boy another locket like it. This was the first time any employee about the hotel knew what was in the box the plaintiff had left with the clerk. When the bell boy asked for the locket, the clerk with whom it had been left had gone off watch, and the night clerk who had come on could not find it. About 3 o'clock at night this clerk did find it, and, after opening the box and seeing the locket inside, intrusted it to the bell boy to take to plaintiff's room. The boy laid the box on a balustrade in the hotel until he filled an order for liquor which some guests had given, and when he returned it was gone.

The court held that under these circumstances the innkeeper was not liable. Judge Goode said: "It is plain that when plaintiff handed the box containing the locket to the hotel clerk to keep until supper was over, not apprising him of its contents, the hotel company became, at most, a gratuitous bailee or depositary, and was liable only for gross negligence in the care of the property. It assumed no liability as an innkeeper, for the reason that the article was one which, under the statute we have cited, it was plaintiff's duty to intrust to the defendant to be deposited in the hotel safe. The defendant was responsible only as bailee."

The stress apparently laid by the court on the failure to state the contents of the package was hardly meant to indicate the fact as a reason for holding that there was no deposit under the act, but rather as a reason for holding that the innkeeper was not liable as a bailee; the nature and value of the package having a bearing on the amount of care necessary.

The only reason for holding that the statute was not complied with appears to have been that the deposit was neither expressly nor by implication a deposit for safe-keeping under the act.

§ 425. Effect of deposit.

If the guest in compliance with the terms of the statute deposits valuables with the innkeeper, the latter is liable for them as at common law. So in the leading case of *Wilkins v. Earle* ³⁵ it appeared that the plaintiff, a guest in the defendant's inn, deposited in the hands of the proper servant of the defendant a package containing twenty thousand dollars, and this package was stolen from the safe. The innkeeper was held liable. Mr. Commissioner Hunt said: "The liability of an innkeeper for the goods of his guest has been settled for centuries. The act of 1855 does not purport to create it nor even to declare it. It assumes the liability. It enacts that whenever the proprietors of an hotel shall provide a safe in their office for the keeping of money, jewels, or ornaments belonging to their guests, and shall notify their guests thereof, and a guest shall neglect to deposit his money, jewels or ornaments therein, the proprietor shall not be liable for any loss of the same by his guest. This act assumes that, before its passage, the innkeeper was liable for the loss of the money, jewels or ornaments of his guest. It assumes that he still remains liable, if a deposit is made by the guest of his money nor jewels, according to the terms of the act. It neither enlarges or restricts the liability. It leaves it as the common law fixes it, with the condition as to money and jewels, that, if a particular notice is given by the innkeeper, the liability shall not attach unless such money and jewels are deposited in the office safe. In the present case this notice was given and the condition was complied with. The liability stands therefore as the common law fixed it."

The same thing is true if compliance with the statute is

³⁵ 44 N. Y. 172, 4 Am. Rep. 655 (1870).

waived by the innkeeper. Thus, in the case of *Friedman v. Breslin* ³⁶ it appeared that a guest at the defendant's inn had some jewelry with her, which at various time she deposited in the office safe, until upon a certain occasion, when she was about to leave the hotel for a few hours, at the suggestion of the clerk, the jewelry was left in her trunk in her room, the keys of the room and of the trunk being left in the custody of the clerk, who agreed to look after them, and who assured her that the jewels would be safe. During her absence the jewels were stolen. The innkeeper was held liable, in spite of the provisions of the statute. In the Appellate Division of the Supreme Court Judge Woodward said: "That statute was enacted for the protection of proprietors of hotels; but if the rooming clerk was the manager of the hotel, and authorized the plaintiff's assignor to leave her jewelry in her room, he must be deemed to have waived any rights which the defendant might have had under the law. It is well established in this State that a party may waive a statutory, and even a constitutional, provision made for his benefit, and that, having once done so, he cannot afterwards ask for its protection."

§ 426. Waiver of deposit.

In order, however, to constitute a waiver of the provisions of the statute the act of the innkeeper or his servant authorizing the guest to keep property in his room must be done with full knowledge that the property is of the sort covered by the statute. This unquestionable principle was made the basis of decision in a case in which, to say the least, its application was doubtful. The plaintiff, while a guest at the defendant's hotel, offered a package of jewelry to the bookkeeper, requesting him to put it in the safe, but not disclosing the nature of the contents; and the bookkeeper, without making inquiry in regard to the same, told the plaintiff there was no necessity

³⁶ 169 N. Y. 574, 61 N. E. 1129 (1901), affirming *S. C.*, 51 App. Div. 268, 65 N. Y. Supp. 5 (1900).

for that; to take the package to his room; that it would be just as safe there,—whereupon the plaintiff took the package to his room, and placed it in his trunk, from whence it was stolen. Nothing in the appearance of the package indicated the nature of its contents. It was held that the defendant was not liable.³⁷ In the Supreme Court Judge George G. Barnard said: “This interview can be available to the plaintiff, only on the ground that by it he was deprived of the security of the safe, and that, therefore, the case is to be considered as if no safe had been provided.

“To have this effect, knowledge of the contents of the package should be brought home to the clerk. The plaintiff urges that he had reasonable notice of the contents, by its being offered for deposit. Whether that was reasonable notice or not, depends on all the surrounding circumstances. Under the facts of this case, I think it was not. Here the plaintiff offers a large package, done up in a rough style, not indicating in any manner that it contained jewelry, but, on the contrary, leading to the supposition that it was an ordinary package, which the plaintiff, to prevent the necessity of going upstairs, desired to have temporarily placed in the safe. It was calculated to mislead, and that it did mislead, and that the plaintiff knew it misled the clerk, I think is apparent from the whole evidence. As the clerk had previously deposited an opera glass in the safe, at the plaintiff’s request, his statement, that this package would be just as secure in the room as in the safe, was enough to show the plaintiff that the clerk was unaware of the valuable contents of said package, and supposed it not to be of a character which should require the protection of a safe. The plaintiff knew the value of the package, and also knew that the clerk did not, and the evidence warrants the conclusion that the plaintiff knew that if he had disclosed the value to the clerk, such clerk would have deposited it in the safe, and that for some purpose of his own, he concealed the

³⁷ Bendetson v. French, 46 N. Y. 266 (1871), affirming *S. C.*, 44 Barb. 31 (1865).

value purposely and knowingly, leaving the clerk under a false impression."

§ 427. During what time the limitation is in effect.

The deposit cannot always be made with the innkeeper, as required by the act, at the very moment of the guest's becoming such; and the limitation of liability does not take effect, it has been held, until the guest has failed to avail himself of the privilege of deposit. A reasonable time must therefore elapse, after the guest's arrival at the inn, for the guest to deposit his valuables; and during that time the innkeeper remains liable as at common law, in spite of the statute.³⁸ In the same way the guest must get his property together, previous to his departure from the inn; and after the goods have come to the hands of the guest for that purpose the statute cannot apply. This would seem to be equally true even if the goods were never in fact deposited. It may be said generally that notwithstanding the provisions of the statute the innkeeper is responsible for the guest's goods, as at common law, for such reasonable period before his departure as is necessary for him to collect, pack and remove his goods.³⁹

Topic IV. What Goods must be deposited with the Innkeeper.

§ 428. Whether all goods must be deposited.

A question much discussed in the cases is whether under the statutes limiting liability it is necessary to deposit all goods with the innkeeper in order to enforce his responsibility for the goods, or only certain classes of goods which can be spared. On the one hand it is urged that the guest must for convenience and even from necessity have with him in his room at all times certain articles of personal use, clothing and sufficient money

³⁸ *Becker v. Haynes*, 29 Fed. 441 (1887); *Rosenplaenter v. Roessle*, 54 N. Y. 262 (1873).

³⁹ *Bendetson v. French*, 46 N. Y. 266 (1871).

for current expenses. On the other hand, it is pointed out that this is a question of following the statute, and the statute is explicit in the matter. If the question were one of determining whether a rule of the innkeeper is reasonable, the conclusion would be different. Where an innkeeper by regulation brought to the notice of his guest requires the deposit of valuables with the innkeeper, the regulation, as has been seen,⁴⁰ is reasonable only if articles which the guest needs to have with him are excepted from its operation. But in dealing with a statute, such considerations are not controlling though to be sure they may have a certain weight in determining the proper interpretation of the statute. It is necessary, therefore, to examine with some care the separate statutes on this subject.

§ 429. Statutes expressly excepting goods needed in guest's room.

It is to be noticed first of all that the matter is settled in several States by the express language of the statute. Thus, in the early Pennsylvania act ⁴¹ it was provided that the exemption should not apply to "such an amount of money and such articles of goods, jewelry, and valuables as is usual, common and prudent for the guest or boarder to retain in his room or about his person," and the same provision has been made in Delaware,⁴² Iowa,⁴³ Maine,⁴⁴ Massachusetts,⁴⁵ Montana,⁴⁶ Nebraska,⁴⁷ New Hampshire,⁴⁸ North Dakota,⁴⁹ Oklahoma,⁵⁰ South Dakota ⁵¹ and Wyoming.⁵² As to the articles so ex-

⁴⁰ *Ante*, § 213.

⁴¹ P. L. 1855, p. 479; *post*, Appendix XXXVI, § 5.

⁴² Appendix VII, § 1.

⁴³ Appendix XIII, § 1.

⁴⁴ Appendix XVII, § 3.

⁴⁵ Appendix XIX, § 5.

⁴⁶ Appendix XXIV, § 3.

⁴⁷ Appendix XXV, § 2.

⁴⁸ Appendix XXVII, § 1.

⁴⁹ Appendix XXXII, § 2.

⁵⁰ Appendix XXXIV, § 1.

⁵¹ Appendix XL, § 2.

⁵² Appendix XLIX, § 1.

cepted, the common-law liability remains, in spite of the notice.⁵³

Under the exception to the act are embraced a gold watch, a pair of gold bracelets, a gold thimble, three gold rings and a gold neck-pin for the owner's personal use and forty dollars for travelling expenses; and the innkeeper is liable for their loss though they were retained by the guest, and kept in his trunk in the chamber.⁵⁴ These articles were taken with the guest for personal use, not merely for transportation, and were such as she might properly use daily while travelling or resting.

§ 430. Statutes expressly enumerating classes of goods to be deposited.

In several States the articles which the innkeeper can require to be deposited in his safe are confined in a certain class of things. Thus, in California the liability of the innkeeper can be limited only in the case of money, jewelry, documents, or other articles of unusual value and small compass;⁵⁵ and a similar provision may be found in Florida,⁵⁶ Illinois,⁵⁷ Kentucky,⁵⁸ Louisiana,⁵⁹ Maryland,⁶⁰ Michigan,⁶¹ Minnesota,⁶² Missouri,⁶³ New Jersey,⁶⁴ New York,⁶⁵ North Carolina,⁶⁶ Ohio,⁶⁷ Rhode Island,⁶⁸ Tennessee,⁶⁹ Vermont,⁷⁰ Washing-

⁵³ *Turner v. Whitaker*, 9 Pa. Super. Ct. 83, 43 W. N. C. 375 (1898).

⁵⁴ *Noble v. Milliken*, 74 Me. 225, 23 Am. Rep. 581 (1882).

⁵⁵ *Post*, Appendix IV, § 9.

⁵⁶ Appendix VIII, § 4.

⁵⁷ Appendix XI, § 2.

⁵⁸ Appendix XV, § 1.

⁵⁹ Appendix XVI, § 5.

⁶⁰ Appendix XVIII, § 4.

⁶¹ Appendix XX, § 2.

⁶² Appendix XXI, § 2.

⁶³ Appendix XXIII, § 3.

⁶⁴ Appendix XXVIII, § 3.

⁶⁵ Appendix XXX, § 3.

⁶⁶ Appendix XXXI, § 6.

⁶⁷ Appendix XXXIII, § 3.

⁶⁸ Appendix XXXVIII, § 1.

⁶⁹ Appendix XLI, § 5.

⁷⁰ Appendix XLIV, § 2.

ton,⁷¹ West Virginia⁷² and Wisconsin.⁷³ The statute is evidently so framed as to exclude clothing and other mere personal baggage of small value; and for this the innkeeper is liable in spite of the act.⁷⁴ And under an act which applies to "jewels and ornaments" silver table forks and a silver ladle are not included.⁷⁵ Mineral specimens are not included under "valuables."⁷⁶

§ 431. Deposit of watch.

The cases differ on the question whether a watch and chain come within the description "jewels and ornaments" or similar language of the statute. In Maryland and New York it is held that they do not, but that the innkeeper is responsible for them in spite of statute and notice.⁷⁷ In *Briggs v. Todd*⁷⁸ the plaintiff, a guest, lost from his room in the inn a watch on the cover of which a state coat of arms had been engraved. The picture of the owner's mother was inside the case. The watch had been laid for a short time inside the owner's trunk. In spite of these facts the court held that the watch was not an ornament.

The reason for this interpretation of the words is forcibly put by Mr. Justice Allen in *Rameley v. Leland*:⁷⁹ "Certain property particularly valuable in itself, taking but small space compared with its value for its safe-keeping, easy of concealment and removal, holding out great temptation to the dishonest, and not necessary to the comfort or convenience of

⁷¹ Appendix XLVI, § 3.

⁷² Appendix XLVII, § 3.

⁷³ Appendix XLVIII, § 1.

⁷⁴ *Treiber v. Burrows*, 27 Md. 130 (1867).

⁷⁵ *Briggs v. Todd*, 28 N. Y. Misc. 208, 59 N. Y. Supp. 23 (1899).

⁷⁶ *Brown Hotel Co. v. Burckhardt*, 13 Col. App. 59, 56 Pac. 188 (1899).

⁷⁷ *Maltby v. Chapman*, 25 Md. 310 (1866); *Bernstein v. Sweeny*, 33 N. Y. Super. Ct. 271 (1871); *Ramaley v. Leland*, 43 N. Y. 539, 3 Am. Rep. 728 (1871); *Becker v. Warner*, 90 Hun (N. Y.), 187, 35 N. Y. Supp. 739 (1895).

⁷⁸ 28 N. Y. Misc. 208, 59 N. Y. Supp. 23 (1899).

⁷⁹ 43 N. Y. 539, 3 Am. Rep. 728 (1871).

the guest while in his room, is made the subject of the statutory exemption. Property of a different description, including all that which is useful or necessary to the comfort and convenience of the guest, that which is usually carried and worn as a part of the ordinary apparel and outfit, or is ordinarily used, and is convenient for use, by travellers as well in as out of their rooms, is left, as before the statute, at the risk of the innkeeper. The words of the statute must be taken in their ordinary sense, in the absence of any indication that they were used, either in a technical sense or a sense other than that in which they are popularly used. A watch is neither a jewel or ornament, as these words are used and understood, either in common parlance or by lexicographers. It is not used or carried as a jewel or ornament, but as a timepiece or chronometer, an article of ordinary wear by most travellers of every class, and of daily and hourly use by all. It is as useful and necessary to the guest in his room as out of it, in the night as the daytime. It is carried for use and convenience and not for ornament. But it is enough that it is neither a jewel or ornament in any sense in which these words have ever been used. The question of negligence, and whether the plaintiff could and did bolt his door, were properly submitted to and passed upon by the jury."

In other States, however, a watch is held to come within the words of the statute, and the innkeeper is not responsible for it if it is not deposited with him, provided he has complied with the requirements of the Act.⁸⁰ In *Stewart v. Parsons*⁸¹ the court said: "There is no satisfactory reason for saying that the property lost does not come fully within the language and intent of this enactment. The statute, in sub-

⁸⁰ *Long v. Arcade Hotel Co.*, 9 Ohio Dec. 372, 12 Wkly. Law Bull. 250 (1883); *Prescott v. Bruce*, 2 Cinn. Rep. 58 (Oh. 1871); *Meacham v. Gallo-way*, 102 Tenn. 419, 52 S. W. 859, 73 Am. St. Rep. 886, 46 L. R. A. 319 (1899); *Rains v. Maxwell House Co.*, 112 Tenn. 219, 79 S. W. 114 (1904); *Stewart v. Parsons*, 24 Wis. 241 (1869).

⁸¹ 24 Wis. 242 (1869).

stance, provides that no innkeeper in this State who shall constantly have in his inn an iron safe in good order, and suitable for the safe custody of money, jewelry, and articles of gold and silver manufacture and the like, shall be liable. The object of this law is very manifest. It is intended to limit and restrict the liability of an innkeeper at common law or by custom for the loss of the goods of his guests committed to his care."

§ 432. Deposit of article needed for immediate use.

The question whether an article expressly mentioned in the act but necessary to be kept by the guest in his room shall be excepted from its provisions is also one of some doubt on the authorities. In a case in New York decided soon after the passage of the act it was held that the act would not apply to a sum of money reasonably necessary for current expenses; on the ground that the act could not be intended to require so inconvenient a thing.⁸² But this was afterwards overruled in New York, and the doctrine established that the innkeeper who has complied with the act is not responsible for any sum of money, however small, not deposited with him.⁸³ In Maryland it is still held that the guest is not required under the act to deposit money necessary for his travelling expenses;⁸⁴ but in other jurisdictions the rule finally established in New York prevails.⁸⁵

This seems at first thought a hardship; but as has been said, the statute was adopted for the benefit of the hotel keepers, not for the guests. It is to be considered that the innkeeper is relieved only from an extraordinary liability, for which in modern times the reason has largely ceased; and that the result of the act is to put no greater burden of risk upon the

⁸² *Gile v. Libby*, 36 Barb. (N. Y.) 70 (1861); followed in *Krohn v. Sweeny*, 2 Daly (N. Y.), 200 (1867).

⁸³ *Hyatt v. Taylor*, 42 N. Y. 258 (1869); *Ramaley v. Leland*, 43 N. Y. 539, 3 Am. Rep. 728 (1871); *Rosenplaenter v. Roessle*, 54 N. Y. 262 (1873).

⁸⁴ *Maltby v. Chapman*, 25 Md. 310 (1866).

⁸⁵ *Lang v. Arcade Hotel Co.*, 9 Ohio Dec. 372, 12 Wkly. Law Bull. 250 (1883); *Rains v. Maxwell House Co.*, 112 Tenn. 219, 79 S. W. 114 (1904).

guest than he has at all times except when he happens to resort to an inn. On this point the Supreme Court of Tennessee said:⁸⁶ "If a guest sees proper to keep his watch and his fob and money upon his person or in his room, he does so at his own risk, just as he keeps it about his own person and in his possession when not in the hotel or inn. If he desires for his own safety or convenience to place the responsibility for its safe-keeping upon the hotel company during his stay in the hotel as a guest, then he must place it in the safe which the statute requires to be provided by the innkeeper for that purpose. We can put no other construction upon the statute, without nullifying wholly or to some extent its provisions.

"It may be inconvenient to deposit small sums of money and pieces of jewelry of little value in the safe of a hotel, and it may be inconvenient to do without their use during the stay of the guest; but this is a condition, under the statute, upon which the hotel keeper can alone be made liable for their safety as an insurer.

"If the guest desires to avoid these inconveniences, he may retain possession of his money and his jewelry, just as if he were not a guest of the hotel."

Even in States where no limit is set in the statute to the goods which the innkeeper may require to be deposited in his safe, the court may place a limit based on the reasonableness of the case. Thus, in Georgia, where an innkeeper required the deposit of all valuables in his safe, under the provisions of the act,⁸⁷ the court held that the guest need not deposit his watch or a reasonable amount of money for his expenses in order to hold the innkeeper responsible. Mr. Chief Justice Jackson said: "It cannot be that such a notice is applicable to guests in a room in the hotel. Is the guest to deposit his valise there, and go or send after it to get out a clean shirt to put on? Is he to leave his coat there, go to his room in his shirt sleeves, or send it down and get a check for

⁸⁶ *Rains v. Maxwell House Co.*, 112 Tenn. 219, 79 S. W. 114 (1904).

⁸⁷ *Post*, Appendix IX, § 7.

it after he goes to bed? Is he to deposit there his watch and pocket change and get a check for them? The whole regulation, if meant for guests in their rooms, is on its face not only unreasonable but absurd.

“Was it admissible to show negligence in this guest in not reading it when he registered his name under it? He was bound to know the law at his peril, and surely he may use it for his protection. When he knew it, he knew that such notice was not applicable, and could not be applicable, to him in his room; because it was unreasonable to apply it to the wearing apparel and valises and trunks and other luggage of the sojourner at the hotel with his wife in his room.”⁸⁸ The court cited in support of this view cases in which the innkeeper’s regulation had been adopted without the authorization of a statute.

⁸⁸ *Murchison v. Sergeant*, 69 Ga. 206 (1882).

CHAPTER XXXII.

CRIMES AGAINST INNKEEPERS.

Topic I. Fraud on innkeeper in general.	§ 448. Board must be obtained by the pretence.
§ 441. Statutes punishing fraud in guests and boarders.	Topic III. Surreptitious removal of property.
442. Statute strictly construed.	449. Surreptitious removal as <i>prima facie</i> evidence of fraud.
443. Form of indictment.	450. Surreptitious removal as substantive offence.
Topic II. Fraudulent obtaining of board.	451. What sort of removal is surreptitious.
444. Fraud essential.	452. Posting of notice not necessary.
445. False representation required.	
446. Pretence must be made with fraudulent motive.	
447. Board or other accommodation must be actually obtained.	

Topic I. *Fraud on Innkeeper in General.*

§ 441. Statutes punishing fraud in guests and boarders.

By statute in several States the fraudulent obtaining of board or other accommodation, and the fraudulent removal of property in order to evade a board bill, are made criminal. The statutes cover the cases of both inns and boarding houses⁽¹⁾.

The statute is not unconstitutional, either as involving imprisonment for debt² or for any other reason.³

Even if the statute punishes the mere removal of baggage

¹ Commonwealth v. Gough, 3 Kulp (Pa.) 148 (1884).

² *Ex parte* King, 102 Ala. 182, 15 So. 524 (1894); Hutchinson v. Davis, 58 Ill. App. 358 (1895); State v. Benson, 28 Minn. 424, 10 N. W. 471 (1881); State v. Yardley, 95 Tenn. 546, 32 S. W. 481 (1895).

³ State v. Kingsley, 108 Mo. 135, 18 S. W. 994 (1891); State v. Yardley, 95 Tenn. 546, 32 S. W. 481 (1895).

by one who has not paid his bill, without requiring a fraudulent intent, it is constitutional. "The guest may then be imprisoned, not for failure to pay the debt, but for impairing the efficacy of the lien."⁴

§ 442. Statute strictly construed.

It has been held that the statute, being a penal one, must be strictly construed.⁵ This consideration did not, however, appeal with great force to Judge Handley, who in the Quarter Sessions of Luzerne County, Pennsylvania, in the case of *Commonwealth v. Morton* ⁶ used this poetic and almost scriptural language: "This law was passed to protect the rights of a meritorious class of citizens, and ought to be so construed as to fully carry into effect the protection intended for such persons from the wily ways of the hungry and dishonest, who, roaming at large without any respect for the rights of others, violate all laws with impunity. There is no crime but what man will commit when hunger stares him in the face; and when that hunger is appeased, there is no more ungrateful creature at large. Parties who will eat of the bread obtained by the sweat of another man's brow must pay for it, or obtain it in an honest way, or for charity sake; otherwise, if he is discovered removing surreptitiously his property out of any such place named in the statute, after obtaining credit for food or accommodations, although such property be but a breast pin, he may be convicted and imprisoned under the act."

§ 443. Form of indictment.

The indictment need not allege that the board obtained was of any value; nor need an indictment for surreptitious removal of baggage, allege that the baggage was of any value.⁷

⁴ *State v. Engle*, 156 Ind. 339, 58 N. E. 698 (1900).

⁵ *Hutchinson v. Davis*, 58 Ill. App. 358 (1895).

⁶ 6 Luzerne Leg. Reg. 207, 9 Lanc. Bar. 79 (Pa. 1877).

⁷ *State v. Benson*, 28 Minn. 424, 10 N. W. 471 (1881).

But an indictment for obtaining board by false pretences must allege the nature and character of the pretences, that the defendant may know the specific nature of the charge he is compelled to meet.⁸

Topic II. *Fraudulent obtaining of Board.*

§ 444. Fraud essential.

There must be some element of fraud about obtaining the board in order to bring it within the statute. So where the only evidence was that the defendant, after being entertained for a week, was unable to pay; that the innkeeper forbade him to go until he paid; that he asserted that money was due him in a neighboring city, and the innkeeper allowed him to go to get it; and that he did not return with the money, it was held that a conviction could not be supported.⁹ Judge Ross said: "If an impecunious guest who has been guilty of no fraud except inability to pay, is unable to pay the amount of a board bill already incurred, it would seem from the contention of the complainant that he must either remain and increase his liability and the landlord's loss, or if he goes away openly, and for the ostensible purpose of obtaining the money to pay the amount of the bill, that he is liable to arrest and conviction. This would amount practically to liability to conviction in every case of inability to pay a board bill. I do not think that the statute contemplates such a result. A hotel keeper can require payment in advance from his guests, he has a common-law and statutory lien upon the baggage of his guests, and he is protected from actual fraud, and this is all. The mere fact of inability to pay a hotel bill is not made a crime."

§ 445. False representation required.

The statute is akin to the statutes punishing one who obtains property by false pretences, and is to be interpreted in

⁸ Commonwealth v. Dennis, 1 Pa. Co. Ct. 278 (1884).

⁹ People v. Nicholson, 25 N. Y. Misc. 266, 55 N. Y. Supp. 447 (1898).

the same way. The false pretence by means of which the board is obtained must therefore be made with reference to a past or existing fact; a promise to do something in the future is not such a false pretence as to justify a conviction under the statute, even if the promise was not kept. Thus, where a boarder promised to pay his board as soon as he drew his pay as clerk of the general assembly, but when he drew his pay he left the inn and the city without paying his board, the statute was not violated.¹⁰ Judge Ellison said: "The statute upon which this indictment is founded cannot be distinguished in this respect from the sections relating to false pretences, cheats, devices, etc. It simply places obtaining board in the same category with other things obtained by false pretences. The matter charged here was a false representation, or statement, or pretence made by defendant, that in the future, viz., when he drew his pay as clerk in the general assembly, he would pay his board. The indictment does not aver, nor is it pretended, that defendant made any representation as to any existing matter which was false. He was, at the time, a clerk in the general assembly, and his promise, representation, statement or pretence, that he would pay his board when he should, in the future, draw his money as clerk, was no more than if he had promised 'to pay as soon as he should get the money.' Everyone who boards at a hotel or boarding house directly or indirectly promises to pay his board, and yet it would scarcely be thought such promise, though false, would subject the promisor to a criminal prosecution."

§ 446. Pretence must be made with fraudulent motive.

The pretence must be made for the purpose of obtaining the board. In a Missouri case ¹¹ the defendant registered at the Southern Hotel on July 29, and was assigned to a room.

¹⁰ *State v. Tull*, 42 Mo. App. 324 (1890). See to the same effect *State v. Kingsley*, 108 Mo. 135, 18 S. W. 994 (1891).

¹¹ *State v. Kingsley*, 108 Mo. 135, 18 S. W. 994 (1891).

On July 31 she sent for the manager, rented a room as a studio, stating that she was an artist, and inquired when the bills were payable. Being told that they were payable weekly, she said that it would be inconvenient to pay at the end of the week, because she expected a remittance in two weeks; and asked that her bill might be payable then. The manager, without asking from whom she expected the remittance, assented. No remittance coming at the end of two weeks she was, after a few days, excluded from the hotel and indicted under the statute. The Supreme Court held that upon this evidence she should be discharged. Mr. Justice Thomas said: "We do not think it can be fairly inferred from the evidence that defendant in this case stated to the manager of the Southern Hotel that she expected a remittance, for the purpose of obtaining board. She registered at the hotel on June [July] 29, and without being questioned or making any statement she was assigned a room. In this manner she obtained board in the first instance. On June [July] 31 she sent for the manager, and upon inquiry she was informed that bills for board were payable weekly. She replied that she could not pay till the end of two weeks, at which time she expected a remittance. It appears, therefore, that she got board for two days, and she could have continued there for one week, at least, without saying a word about payment of the bills. Persons intending to perpetrate tricks or obtain money, property or other valuable things by means of a false pretence, do not ordinarily proceed in this way. They usually defer their false statements till they are forced to the wall. Here defendant made the statements voluntarily."

§ 447. Board or other accommodation must be actually obtained.

The board must be actually obtained in order to have an offence under the act; it is not enough that a contract for board has been made. Thus, where one has contracted to stay at an inn for a certain time and leaves before the time, paying for all the board he has had, the act cannot apply. In

Lundmacher v. Block ¹² it appeared that the guest registered at night, and on being asked how long he was to stay said he should stay at least until after breakfast. He had notice of a rule that a guest staying until after the beginning of a meal must pay for that meal. The next morning, a few minutes after breakfast was served, he tendered to the clerk the amount due for his supper and room; but the clerk, though he knew the guest had not eaten breakfast, demanded payment for breakfast under the rule, and upon the guest refusing to pay caused his arrest and prosecution under the statute. The guest having been acquitted brought this action for malicious prosecution, and the court held that he might recover; there being no reasonable cause to suppose him guilty. Judge Pleasants said: "He did not obtain the breakfast. Nor can it be held that there was a contract, as to either, that he would positively remain for any definite time. They were transients, whose present purposes in that regard, though stated as represented, would not be contracts for the time mentioned, but lawfully changeable at their option for any reason thereafter arising. Nor, if they were contracts would it affect the question under consideration. This statute is not to be extended by any liberality of construction in favor of innkeepers; and we hold that in no proceeding under it is the civil liability of the guest for any accommodation not actually 'obtained' at all pertinent. If he definitely contracted to remain for a week, and left without fault of the innkeeper, at the close of the first day, paying or tendering payment for all that he had actually obtained, evidence of his refusal to pay for the further time contracted for would not be admissible as tending to prove an offence, or probable cause for a prosecution, under this act. Nor should the jury be permitted, upon either of those issues, to consider whether or not the accommodation actually obtained was better, in view of what was further contracted for, than it otherwise would have been, if payment for

¹² 39 Ill. App. 553 (1891).

it was made or tendered according to its actual value or regular price. The innkeeper will not be allowed to claim that if he had understood the guest was to remain only a day instead of a week, he would or might have been furnished a meaner room, any more than that there would or might have been less of benignity in the smiles of the clerk or of alacrity in the responses of bell boys or the movements of table waiters. Having peculiar rights they are subject to peculiar obligations."

§ 448. Board must be obtained by the pretence.

The board must be obtained by means of the false pretence. If after the board has been obtained the guest employs a false pretence to delay the time of payment or to put off the importunity of his creditors, it does not come within the statute. So where a guest had been staying at an inn without settling his board bill since January, and in May, just before leaving the inn, he made a false pretence, he could not be convicted under the statute.¹³ Judge Ellison said: "In order to a proper conviction under the statute, the defendant must have obtained the board by means of the false pretence, and the party defrauded must have permitted him to obtain it on the faith of, and in reliance upon the truth of, the false representation, statement or pretence. The true interpretation of the testimony is that at about the time defendant was to leave the hotel he made the false promise, substantially all the board having been obtained."

So if the pretence was not believed by the innkeeper the offence is not committed. "The proprietor must be shown to have been deceived to his injury. If he knew the representations were false, or if he believed they were false, or if he did not believe the statement or representation to be true, or if he believed the representation, but, if they had no influence upon his conduct, no deception was practiced. These essentials are requisite to the maintenance of a civil action or

¹³ State v. Tull, 42 Mo. App. 324 (1890).

defence predicated upon false representations, and surely nothing less should suffice to support a criminal prosecution.”¹⁴

Topic III. *Surreptitious removal of Property.*

§ 449. Surreptitious removal as prima facie evidence of fraud.

Failure to pay the bill or absconding without paying the bill and surreptitiously removing or attempting to remove baggage, is often made *prima facie* evidence of fraudulently obtaining the board. This clause must be so interpreted as not to constitute practically an imprisonment for debt, since such imprisonment would be unconstitutional. It cannot therefore be so interpreted as to make the mere refusal to pay a bill sufficient reasonable cause for prosecution and imprisonment. The removal of the baggage surreptitiously must accompany the refusal to pay, in order to have such effect.¹⁵

§ 450. Surreptitious removal as substantive offence.

Where the surreptitious removal of baggage after obtaining credit is itself the offence, the crime is committed when the baggage is removed, not at the time the accommodation is obtained. In *Commonwealth v. Morton*¹⁶ it appeared that accommodations were obtained and credit extended before the passage of the act, but the defendant absconded and surreptitiously removed his baggage after the act had come into force. It was held that he might be convicted. “The offence” the court said “is not complete when credit is obtained, but, in the language of the law, is complete after the defendant obtains credit and then absconds and surreptitiously removes his baggage or property.”

§ 451. What sort of removal is surreptitious.

A surreptitious removal of baggage involves some concealment; if it was done openly, though at a time when no one

¹⁴ *Chauncey v. State*, 130 Ala. 71, 30 So. 403 (1901). See also *State v. Kingsley*, 108 Mo. 135, 18 S. W. 994 (1891).

¹⁵ *Hutchinson v. Davis*, 58 Ill. App. 358 (1895).

¹⁶ 6 Luz. Leg. Reg. (Pa.) 207, 9 Lanc. Bar, 79 (1877).

was watching, the removal would not be surreptitious. "The fact that neither appellant nor any of his agents knew that he was going away, or taking his baggage away, does not, of itself, establish that the removal was surreptitious. He may have gone and taken his baggage in the most open and public manner, and yet neither appellant nor any of his agents seen the removal."¹⁷ The approved definition of the word is "done by stealth, or without legitimate authority, made or produced fraudulently; characterized by concealment or underhand dealing; clandestine;"¹⁸ and though one of the definitions mentions fraud, the fraud meant is obviously a fraud used to escape the notice of the person interested; as in the example given, the surreptitious edition of a book. The word by derivation means, taken away secretly. It is therefore obvious that a surreptitious removal is one which is done clandestinely so as to escape the notice of the innkeeper by reason of the method of doing it. / In *Commonwealth v. Morton*,¹⁹ however, the word "surreptitious" seems to have received a different and hardly permissible interpretation. The defendant's gun being held by the innkeeper, he induced the innkeeper to give it up to him by falsely pretending that he wished to lend it to a friend for a short time to shoot with, and he would then return it. He failed to return it. The court held that the jury upon this evidence might find the removal surreptitious. Judge Handley said: "The evidence shows that the defendant obtained possession of the gun under representations which misled the prosecutor. Upon the trial of the case, notwithstanding the defendant was called on to testify, he failed to show why the gun was not returned, and he also failed to establish the truth of his representations when he secured possession of this property. It was left with the jury to say, from all the evidence in the case, whether his obtaining the possession was surreptitious within

¹⁷ *Waterman, P. J.*, in *Hutchinson v. Davis*, 58 Ill. App. 358, 363 (1895).

¹⁸ *Century Dictionary*, s. v.

¹⁹ 6 Luz. Leg. Reg. (Pa.) 207, 9 Lanc. Bar, 79 (1877).

the meaning of the law. As this was a question of fact, under the instructions given by the court, and the jury found the defendant guilty, we have no reason to disturb their finding.”\

§452. Posting of notice not necessary.

Upon an indictment for absconding and surreptitiously removing his baggage from a hotel after obtaining credit for food and accommodations, it is improper to admit evidence that the proprietor did or did not put up the notices required by another section of the act, as it is only when such proprietor is upon trial for any of the offences enumerated in the other section that such evidence is pertinent.²⁰

²⁰ Commonwealth v. Morton, 6 Luz. Leg. Reg. (Pa.) 207, 9 Lanc. Bar, 79 (1877).

APPENDIX.

STATUTES OF THE VARIOUS STATES REGULATING INNS AND OTHER PUBLIC HOUSES AND THE RIGHTS OF INNKEEPERS AND GUEST.

I.

ALABAMA.

CIVIL CODE OF 1896.

§ 1.

In the absence of a special contract, as is authorized in the succeeding section, the rights of guests, and the liability of the keeper remain as at common law (Civ. Code, § 2539):

**Liability of inn
or hotel keep-
ers.**

§ 2.

The keeper of a public inn or hotel may require any guest, or person proposing to become a guest, to enter into a special contract as to the kind and place of board, entertainment, or lodging to be furnished such guest, and the price therefor to be paid; and if such guest refuses to enter into such contract and to accept such board, entertainment, or lodging at the price proposed, as the keeper may offer, the keeper may refuse to receive or to entertain such guest, and because of such refusal shall not incur any liability whatever. Such special contract must be in writing, signed by both parties; and thereby the inn or hotel keeper may limit his

**Special con-
tract between
inn or hotel
keeper and
guest author-
ized.**

APPENDIX.

liability for the safety of the goods of such guest, as it is defined or declared by the common law (*Ibid.*, § 2540).

§ 3.

Safe for deposit of valuables.

Every keeper of a public inn or hotel in a city must provide himself with an iron chest, or other safe depository for valuable articles belonging to his guests and customers, and must keep posted upon his doors and other public places in his house of entertainment, written or printed notices to his guests and customers, that they must leave their valuables with the landlord, his agent, or clerk, for safe-keeping, that he may make safe deposit of the same in the place provided for that purpose (*Ibid.*, § 2541).¹

§ 4.

Not liable for articles not deposited.

Such hotel or innkeeper as shall comply with the requirements of the preceding section, shall not be liable for any money, jewelry, watches, plate, or other things made of gold or silver, or of rare and precious stones, or for other valuable articles of such description as may be contained in small compass, which may be abstracted or lost from any such public inn or hotel, if the same shall not be left with the hotel or innkeeper, his clerk, or agent for deposit, unless such loss shall occur through the fraud of the hotel or innkeeper, or some clerk or servant

¹ Posting this notice on a single door is not sufficient. *Beale v. Posey*, 72 Ala. 323 (1882). It must be posted on the doors of all rooms occupied by guests. *Lanier v. Youngblood*, 73 Ala. 587 (1883). The fact that notices were posted a year before, at a previous visit of the guest, is immaterial. *Ibid.*

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employed by him in such inn or hotel (*Ibid.*, § 2542).²

§ 5.

The owner or manager of any theatre holding any such license must issue tickets of admission to all persons whom they admit to their exhibition, and must thereon assign a particular seat to each such person, in such part of the theatre as the convenience of such owner or manager may require (*Ibid.*, § 4122, ¶ 15, *repealed* by Acts of 1900-1901, p. 2633).

Theatre tickets: provision repealed.

§ 6.

Any person who by fraud or misrepresentation obtains board or lodging from the landlord, proprietor or keeper of any hotel or boarding house, and fails or refuses to pay for the same, must, on conviction, be fined not more than five hundred dollars, and may also be sentenced to hard labor for the county for not longer than six months (Penal Code, § 4755).³

Obtaining board by fraud.

² This provision must be construed strictly against the innkeeper. *Lanier v. Youngblood*, 73 Ala. 587 (1883). And if the innkeeper fails to post the notice as provided in the preceding section, he continues liable as at common law. *Ibid.*

³ This statute is not unconstitutional. *Ex parte King*, 102 Ala. 182, 15 So. 524 (1894). One of the necessary elements of this crime is that the misrepresentations or fraud charged should have been relied on by the hotel keeper, and induced him to furnish the board and lodging, in consequence of which he was deceived to his injury; and hence where such hotel keeper, at the trial of a prosecution under the section, testified that he did not believe the statements made by the defendant which were alleged to have constituted the fraud, no conviction could be had.—*Chauncey v. State*, 130 Ala. 71, 30 So. 403 (1901).

APPENDIX.

II.

ARIZONA.

REVISED STATUTES OF 1901.

§ 1.

**Liens on
baggage.**

All hotel, inn, boarding-house or lodging-house keepers shall have a lien upon the baggage and other property of value of their guests or boarders or lodgers, brought into such hotel, inn, or boarding house or lodging house by such guests or boarders or lodgers for the proper charges due from such guests or boarders or lodgers for their accommodation, board or lodging and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage or other property of value, until all such charges are paid (Rev. Stat., § 2916).

§ 2.

**Hotel keepers
may sell bag-
gage after six
months.**

Whenever any trunk, carpetbag, valise, box, bundle, furniture, merchandise or baggage has heretofore, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house as such, and has remained or shall remain unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of

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such sale may retain the charges for storage if any, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village or place in which said hotel, inn, boarding or lodging house or warehouse is situated. Said notice shall be published once a week for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpetbag, valise, bundle, box, furniture, merchandise or baggage, as near as may be, the name of the owner, if known, the name of such keeper, and the time and place of such place (sale); and the expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, furniture, merchandise or baggage at a ratable proportion, according to the value of such property or thing or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof or his legal representative within one year thereafter, the same shall be paid into the general fund of said county (*Ibid.*, § 2917).

§ 3.

Every keeper of a hotel, inn, boarding or lodging house shall post in a conspicuous place in the office or public room, and in every bedroom of said hotel or boarding house, a printed

**Hotel keepers
must post this
section.**

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copy of this section, with a printed statement of charge or rate of charges by the day, week or month, as the case may be, for simple meals, lodging, or for items furnished. No charge shall be made or sum collected or received by any such person for any service so enumerated, not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging house. For any violation of this section, or any provision here contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to (*Ibid.*, § 2918).

§ 4.

Innkeeper liable to guests for damages to property.

An innkeeper is liable for all losses of, or injuries to personal property placed or left by his guests under his care; unless occasioned by an irresistible, superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn (*Ibid.*, § 2919).

§ 5.

Fire-proof safe. Notice of, must be given.

If an innkeeper keeps a fire-proof safe, and gives notice to a guest, either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe and will not be liable for money, jewelry, documents or other articles of unusual value and of small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or

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any injury to such articles if not deposited with him and not required by the guest for present use (*Ibid.*, § 2920).

§ 6.

It shall be the duty of all hotel, inn, boarding and lodging-house keepers to issue receipts or checks to guests for all baggage, clothing or things of value left with them for safe-keeping, but such receipts or checks shall not specify any amount or value attached to such articles, unless by mutual agreement between the party depositing the same and the party receiving it (*Ibid.*, § 2921).

**Checks for
baggage, etc.**

§ 7.

Any person who shall put up at any hotel, inn, or lodging house, and shall procure any food, entertainment or accommodation without paying therefor, except where credit is expressly given, with intent to cheat or defraud the owner or keeper thereof out of the pay for the same; or who with intent to cheat or defraud such owner, or keeper, out of the pay therefor, shall obtain credit by means of any false show of baggage or effects brought thereto, or who shall with such intent remove or cause to be removed any baggage or effects from any hotel, inn or lodging house while there is a lien thereon for the proper charges due from him, for such accommodation, shall be punished by imprisonment in the county jail, not exceeding three months or by a fine not exceeding one hundred dollars (\$100) (Laws 1905, ch. 10, § 1).

**Punishment
for fraud on
innkeepers.**

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III.

ARKANSAS.

ACTS OF ARKANSAS, 1899, ACT CLXV.

AN ACT to prevent fraud upon hotels, inn or boarding-house keepers, and for other purposes.

§ 1.

Gives keepers of hotels lien for board and lodging.

Every person operating any hotel, inn or boarding house in this State, shall have a lien upon the baggage and personal effects of all persons receiving food, entertainment or accommodation thereat or therefrom (Acts of 1899, p. 300).

§ 2.

Persons defrauding hotel keepers by fraud, misrepresentation or in any other way shall be subject to fine.

Any person who shall put up at any hotel, inn or boarding house and shall procure any food, entertainment or accommodation without paying therefor, except where credit is given by express agreement, with intent to cheat or defraud the owner or keeper thereof, out of the pay for the same; or, who with intent to cheat or defraud such owner or keeper out of the pay therefor, shall obtain credit at any hotel, inn or boarding house for such food, entertainment or accommodation by means of any false show of baggage or effects brought thereto, or who shall

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with such intent remove or cause to be removed, any baggage or effects from any hotel, inn or boarding house, without paying the proper charges due from him or her for such food, entertainment or accommodation, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten dollars (\$10) nor more than fifty dollars (\$50) (*Ibid.*).

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IV.

CALIFORNIA.

PENAL CODE OF 1903.

§ 1.

**Innkeepers
and carriers
refusing to re-
ceive guests.**

Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest or to receive and carry any passenger, is guilty of a misdemeanor (Pen. Code, § 365).

§ 2.

**Defrauding
inn or board-
ing house.**

Any person who obtains any food or accommodation at an hotel, inn, restaurant, boarding house or lodging house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding house, or lodging house by the use of any false pretence, or who, after obtaining credit or accommodation at an hotel, inn, restaurant, boarding house, or lodging house absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodations is guilty of a misdemeanor (*Ibid.*, § 537).

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§ 3.

Every hotel keeper, lodging-house keeper, and innkeeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, however, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas fixtures used in such place or places with a practical and safe automatic gas igniter (Stat. 1903, p. 610, § 1).

**Regulating
use of illumi-
nating gas.**

§ 4.

Every person who owns, leases, lets, or hires, to any person or persons, any room or apartment in any building, house or other structure, within the limits of any incorporated city, or city and county, within the state of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space, in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine and imprisonment (Stat. 1875, 1876, p. 632, § 1).

**Cubic air in
s l e e p i n g
apartments.**

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§ 5.

**Punishment
of person
sleeping in
small rooms.**

Any person or persons found sleeping or lodging, or who hires or uses for the purpose of sleeping in, or lodging in, any room or apartment, which contains less than five hundred (500) cubic feet of space in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment (*Ibid.*, § 2).

§ 6.

**Police to in-
vestigate.**

It shall be the duty of the chief of police (or such other person to whom the police powers of a city are delegated) to detail a competent and qualified officer or officers of the regular force to examine into any violations of any of the provisions of this act, and to arrest any person guilty of any such violation (*Ibid.*, § 3).

POLITICAL CODE OF 1903.

§ 7.

**Innkeepers,
etc., may re-
tain goods un-
til charges
paid.**

When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, innkeepers, or warehousemen, for transportation, or safe-keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, innkeeper, or warehouseman, may hold or store the same with some responsible

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person until the freight and all just and reasonable charges are paid (Polit. Code, § 3152).

CIVIL CODE OF 1903.

§ 8.

The liability of an innkeeper, hotel keeper, boarding- and lodging-house keeper, for losses of or injuries to personal property, other than money placed by his guests, boarders, or lodgers under his care, is that of a depositary for hire; provided, however, that in no case shall such liability exceed the sum of one hundred dollars for each trunk and its contents, fifty dollars for each valise or traveling bag and contents, and ten dollars for each box, bundle, or package and contents, so placed under his care, unless he shall have consented in writing with the owner thereof to assume a greater liability (Civ. Code, § 1859).¹

Innkeeper's liability.

§ 9.

If an innkeeper, hotel keeper, boarding-house or lodging-house keeper, keeps a fireproof safe, and gives notice to a guest, boarder, or lodger, either personally or by putting up a printed notice in a prominent place in the office or the room occupied by the guest, boarder, or lodger,

How exempted from liability.

¹ The effect of this clause is to make an innkeeper liable for the loss of personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause. For this purpose a loss occurring by a fire which originated in the battery room of a hotel cannot be considered occasioned by an "irresistible superhuman cause." *Fay v. Pacific Imp. Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188 (1892).

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that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts shall contribute thereto, for any loss of or injury to such articles, if not deposited with him to be placed therein, nor in any case more than the sum of two hundred and fifty dollars for any or all such property of any individual guest, boarder, or lodger, unless he shall have given a receipt in writing therefor to such guest, boarder, or lodger (*Ibid.*, § 1860).

§ 10.

Lien of boarding - and lodging - house keepers.

Hotel men, boarding-house and lodging-house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging house by such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, (and) such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid (*Ibid.*, § 1861).

§ 11.

Unclaimed baggage may be sold at auction.

Whenever any trunk, carpetbag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come, into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such

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sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of such keeper, and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county (*Ibid.*, § 1862).

§ 12.

Every keeper of a hotel, inn, boarding or lodging house, shall post, in (a) conspicuous place, in the office, or public room, and in every bedroom of said hotel, boarding house, inn, or lodging house, a printed copy of this section,

**Keeper to
post rates of
charges.**

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and a statement of charge, or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging house. For any violation of this section or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to (*Ibid.*, § 1863).

§ 13.

Hiring of lodgings for indefinite term.

A hiring of lodgings or a dwelling house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus, a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly (*Ibid.*, § 1944).

GENERAL LAWS OF 1903.

§ 14.

Refusal of admission to inns etc., places of amusement, etc., on account of race or color, imposes civil liability.

That all citizens within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating houses, barber shops, bath houses, theatres, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens (Title 86, Act 604).

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§ 15.

Whoever shall violate any of the provisions of the foregoing section, by denying to any citizen, except for reasons applicable alike to every race or color, and regardless of race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or by aiding or inciting such denial, or whoever shall make any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, restaurant, hotel, eating house, barber shop, bathhouse, theatre, skating-rink, or other public place of amusement or accommodation, whether such place be licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, shall, for each and every such offence, be liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose (*Ibid.*, Act 605).

Penalty.

§ 16.

It shall be unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theatre, melodeon, museum, circus, caravan, race-course, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years who presents a ticket of admission acquired by purchase, and who demands admission to such place; provided, that any person under the influence of liquor,

**Unlawful to
refuse admission
to places
of amusement.
Theatres.**

APPENDIX.

or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement (Title 497, Act 4099, § 1).

§ 17.

Any person who is refused admission to any place of amusement contrary to the provisions of this act is entitled to recover from the proprietor, lessee, or their agents, or from any person, association, corporation, or the directors thereof, his actual damages and one hundred dollars in addition thereto (*Ibid.*, § 2).

STATUTES AND AMENDMENTS TO THE CODES, 1905.

§ 18.

Sale of theatre tickets at premium, unlawful.

Every person who sells or offers for sale any ticket or tickets to any theatre or other public place of amusement at a price in excess of that charged originally by the management of such theatre or public place of amusement is guilty of a misdemeanor (Acts of 1905, chapter CXL; inserted in Penal Code as § 526).

APPENDIX.

V.

COLORADO.

MILLS' ANNOTATED STATUTES (SUPPLEMENT),
1891-1896.

§ 1.

That all persons within the jurisdiction of said State shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, eating houses, barber shops, public conveyances on land or water, theatres, and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens (Annot. Stat. Supp., § 423).

**All persons
entitled to
equal enjoy-
ments.**

§ 2.

That any person who shall violate any of the provisions of the foregoing section by denying to any citizen, except for reasons applicable alike to all citizens of every race and color, and regardless of color or race, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offence forfeit and pay a sum of not less than fifty dollars (\$50) nor more than five

Penalty.

APPENDIX.

hundred dollars (\$500) to the person aggrieved thereby, to be recovered in any court of competent jurisdiction in the county where said offence was committed; and shall also for every such offence be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be fined in any sum not less than ten dollars (\$10), or more than three hundred dollars (\$300), or shall be imprisoned not more than one year, or both; *And, provided further*, That a judgment in favor of the party aggrieved, or punishment upon an indictment or information shall be a bar to either prosecution, respectively (*Ibid.*, § 424).

§ 3.

**Obtaining
food or lodg-
ing — misde-
meanor—pen-
alty.**

Any person who shall obtain food, lodging, or other accommodation at any hotel, lodging house, furnished room, boarding house, or other eating house, with intent to defraud the owner or keeper thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100), or imprisoned in the county jail not less than five days, nor more than thirty days, or both in the discretion of the court (*Ibid.*, § 1404).

§ 4.

Proof.

Proof that lodging, food or other accommodation was obtained by any false pretence, or by any false or fictitious show or pretence of any baggage, or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed or attempted to remove his or her baggage shall

APPENDIX.

be *prima facie* proof of the fraudulent intent mentioned in section one of this act (*Ibid.*, § 1405).

§ 5.

No conviction shall be had under this act, unless notice of it shall have been posted on the inside door of the sleeping room of the person sought to be convicted; or in case there are no such rooms in connection with the eating house, unless such notice shall have been posted in some place at or near where guests usually paid their bills (*Ibid.*, § 1406).

Post copy of preceding sections.

MILLS' ANNOTATED STATUTES OF 1891.

§ 6.

The keeper of any hotel, tavern, or boarding house, or any person who rents furnished or unfurnished rooms, shall have a lien upon the baggage and furniture of his or her patrons, boarders, guests or tenants, for such boarding, lodging or rent, and for all costs incurred in enforcing such lien (Annot. Stats., § 2854).

Lien of hotel or boarding-house keeper.

§ 7.

When any hotel, inn, boarding-house keeper, or the keeper of furnished rooms, may hereafter retain any baggage of any guest by virtue of any lien thereon under the now existing laws of this State, such lien may be enforced as follows, viz.: The party or parties claiming such lien shall address a letter to the best known post office, or the post office entered upon the register of names in such hotel, inn or boarding house of the

Baggage may be retained and sold.

APPENDIX.

party owning the baggage, notifying such party of the amount of the lien claimed, and that the person claiming the same would on a day and hour stated, which shall not be less than thirty days from the time of mailing of such notice, proceed to sell the baggage of said owner at public or private sale, for the payment of the charges thereon now allowed by law. All sales shown to have been conducted under the notice herein required shall be deemed valid and sufficient (*Ibid.*, § 1407).

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VI.

CONNECTICUT.

GENERAL STATUTES OF 1902.

§ 1.

Every person who shall, at any hotel, restaurant, or boarding house, receive or cause to be furnished any food or accommodation, with intent to defraud the keeper of such hotel, restaurant, or boarding house, out of the value or price of such food or accommodation, and every person who shall obtain credit at any hotel, restaurant, or boarding house, by the use of any false pretence or device, shall be fined not more than fifty dollars, or imprisoned not more than thirty days, or both. The departure without intent to return, of any guest from any hotel, restaurant, or boarding house, without the payment of the amount due to the keeper thereof, and without actual notice to said keeper of the intention to depart, shall be *prima facie* evidence of intent to defraud. Every keeper of a hotel, restaurant, or boarding house, shall post in a conspicuous place and manner, in the office or public room of such hotel, restaurant, or boarding house, a printed copy of this section (Gen. Stat., § 1427).

**Defrauding
keeper of
hotel or res-
taurant.**

APPENDIX.

§ 2.

**Liens of
boarding-
house
keepers.**

When a special agreement shall have been made between the keeper of any boarding or lodging house and any person boarding or lodging at such house, regarding the price of such board or lodging, all the baggage and effects kept by such person at such house shall be subject to a lien in favor of the keeper of such house for all such sums as shall be at any time due him from such person for board or lodging; and such boarding-house or lodging-house keeper may detain such baggage and effects until such debt shall be paid; and, if it be not paid within sixty days after it is due, he may sell said property, or such part thereof as shall be necessary, and apply the proceeds to the payment of such debt (*Ibid.*, § 4165).

§ 3.

**Liens of hotel
keepers.**

Whenever the keeper of any hotel or inn shall receive into his hotel or inn any person as a boarder, he shall have a lien and right to detain the baggage and effects of such boarder; and such lien may be enforced in the manner herein-after provided. At any time after thirty days after the person incurring any debt or obligation has left the hotel or inn wherein such debt or obligation was incurred, the debt or obligation being still due and unpaid, the proprietor of said hotel or inn may sell at public auction for cash at the office of said hotel or inn any or all baggage or property left at said hotel or inn, and apply the avails of said sale toward the payment of said debt or obligation; *provided*, that such sale shall be advertised in a newspaper

APPENDIX.

published, or having a circulation in the town where said hotel or inn is situated, three times, commencing at least five days before said sale; and that, in case the last usual place of abode of said debtor is known to or can reasonably be ascertained by said hotel keeper, notice of the time and place of sale shall be given him by mailing such notice to him in a registered letter, postage paid, at such last usual place of abode at least five days before the time of sale. The proceeds of such sale, after deducting the amount due to the proprietor of such hotel or inn, and all expenses connected with such sale, shall be paid to the owner of the property, or his legal representatives, if called for or claimed by him or them at any time within one year from the date of said sale, and if such balance is not claimed or called for as aforesaid within said period, then it shall escheat to the State (*Ibid.*, § 4166).¹

¹ Except so far as is required by the statute, notice need not be given to the owner. *Brooks v. Harrison*, 41 Conn. 184 (1874).

APPENDIX.

VII.

DELAWARE.

REVISED CODE OF 1852, AS AMENDED, 1893.

§ 1.

Proprietor of hotel not liable for loss of valuables unless deposited in safe.

Whenever the proprietor or proprietors of any hotel, inn or boarding house, shall provide a good, sufficient and secure safe, in the office of such hotel, or other convenient place, for the safe keeping of any money, goods, jewelry and valuables belonging to the guests and boarders of such hotel, inn or boarding house, and shall notify the guests and boarders thereof by placing in every lodging room, parlor and public hall, and other conspicuous places, printed cards or notices stating the fact that such safe is provided in which such goods, jewelry and valuables may be deposited, and that the proprietor or proprietors thereof will not be responsible for said money, goods, jewelry and valuables unless deposited in said safe, and if any such guest or boarder shall neglect to deposit such money, goods, jewelry or valuables in such safe the proprietor or proprietors aforesaid shall not be liable to any loss of such money, goods, jewelry or valuables sustained by such guest by theft or otherwise: *Provided*, that nothing herein-contained shall apply to such an amount of

Proviso.

APPENDIX.

money, and such articles of goods, jewelry and valuables as is usual, common and prudent for any guest or boarder to retain in his room or about his person (Laws of Del., vol. 14, ch. 417, p. 409, § 1).

§ 2.

Whenever the proprietor or proprietors of any hotel, inn, or boarding house shall post in a conspicuous manner as aforesaid notices requiring said guest or boarder to bolt the door of the room or rooms occupied by said guest or boarder, or in leaving said room or rooms to lock the door and to deposit the key or keys with the proprietor or the clerk at the office, and if such guest or boarder shall neglect so to do, the proprietor or proprietors as aforesaid shall not be liable for any baggage of such guest or boarder which may be stolen from said room or rooms; *Provided*, that said proprietor or proprietors shall clearly establish the fact of said room or rooms having been left unbolted or unlocked by said guest or boarder, at the time of the loss of said baggage as aforesaid (*Ibid.*, § 2).

Proprietor of hotel not liable for loss of baggage ; when.

Proviso.

§ 3.

If any person, with intent to cheat or defraud shall, by any false or fraudulent representations, or by any false show of baggage, goods or chattels, which are calculated to deceive any hotel, inn or boarding-house keeper, obtain lodging and credit in any hotel, inn or boarding house, and shall subsequently refuse to pay for his board and lodging, the person so offending shall be guilty of a misdemeanor, and on con-

Misdemeanor to defraud hotel keeper.

APPENDIX.

viction be sentenced to pay a fine not exceeding one hundred dollars, or undergo an imprisonment not exceeding three months, or both or either at the discretion of the court (*Ibid.*, § 3).

§ 4.

Keepers of inns, etc., not obliged to entertain certain persons.

That no keeper of an inn, tavern, hotel, or restaurant, or other place of public entertainment or refreshment of travellers, guests, or customers, shall be obliged, by law, to furnish entertainment or refreshment to persons whose reception or entertainment by him, would be offensive to the major part of his customers, and would injure his business. The term customers, shall be taken to include all who have occasion for entertainment or refreshment (Laws of Del., vol. 15, ch. 194, § 1).

Meaning of term "customers."

§ 5.

Proprietors of theatres, etc., not obliged to admit certain persons.

That the proprietor of a theatre, or other public place of amusement, shall not be obliged to receive into his show, or admit into the place where is he pursuing his occupation, any person whose presence there would be offensive to the major part of his spectators or patrons, and thereby injure his business (*Ibid.*, § 2).

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VIII.

FLORIDA.

REVISED STATUTES OF 1892.

§ 1.

Every house kept in this State for the accommodation of twenty-five or more lodgers or boarders is hereby declared to be a hotel (Rev. Stat., § 870).

Hotels defined.

§ 2.

Every proprietor or manager of a hotel is authorized and empowered to prescribe and establish reasonable rules and regulations for the government and management of the hotel and its occupants and employees, and every lodger, boarder, guest or person staying, sojourning or employed in said hotel shall conform to and abide by said rules and regulations so long as he shall remain in or at said hotel, and said rules and regulations shall be held and deemed to be a *special contract and agreement* between the proprietor and manager of said hotel and each and every lodger, boarder, guest, employee and person staying or sojourning at or in said hotel, and shall regulate, fix and control the liabilities, responsibilities and obligations of each, both and all parties; which said rules and

Rules and regulations.

APPENDIX.

regulations shall be printed in the English language and posted, together with a copy of this act, in each bedroom and in some public place, such as the office or hall in the hotel (*Ibid.*, § 871).

§ 3.

Safe to be kept.

An iron safe shall be kept in every hotel in this State for the safe-keeping of the valuables of its occupants (*Ibid.*, § 872).

§ 4.

No liability for valuables unless deposited.

The proprietor or manager of a hotel in this State shall, in no event, be liable or responsible for any loss of any money, jewelry or precious stones of any kind whatever belonging to any lodger, boarder, guest or occupant of or in said hotel, unless the owner thereof shall make a special deposit of said property and take a receipt in writing therefor from the proprietor or manager or a clerk in the office of said hotel, which receipt shall set forth the value of said property (*Ibid.*, § 873).

§ 5.

Fastenings of bedrooms.

Each bedroom shall be furnished or secured with a good, substantial lock and key and a bolt on the inside to fasten the same (*Ibid.*, § 874).

§ 6.

Lien for boarding and lodging.

In favor of keepers of hotels and boarding houses for the board and lodging of, and for moneys advanced to guests; upon the goods

APPENDIX.

and chattels belonging to such guests in such hotel or boarding house.

Upon the non-payment of such sums in accordance with the rules of such hotel or boarding house, the keeper thereof may instantly eject such guest therefrom (*Ibid.*, § 1740). **May eject for non-payment.**

APPENDIX.

IX.

GEORGIA.

CODE OF 1895; SUPPLEMENT OF 1901.

§ 1.

Definition of inn. Under the term "inn" the law includes all taverns, hotels and houses of public general entertainment for guests (Code, § 2932).

§ 2.

Liability of innkeeper. An innkeeper is a depositary for hire, but from the peculiar nature of his business, his liability is governed by more stringent rules (*Ibid.*, § 2933).

§ 3.

Guests. All persons entertained for hire at an inn, or tavern, or hotel, are guests (*Ibid.*, § 2934).

§ 4.

Liability of innkeeper for stolen goods. An innkeeper is bound to extraordinary diligence in preserving the property of his guests, intrusted to his care, and is liable for the same, if stolen, where the guest has complied with all reasonable rules of the inn (*Ibid.*, § 2935).

§ 5.

It is not necessary to show actual delivery to the innkeeper. Depositing goods in a public

APPENDIX.

room set apart for such articles, or leaving them in the room of the guest, or placing a horse in the stable, is a delivery to the innkeeper; if, however, the guest delivers his goods to a servant under special charge to him to keep the same, the innkeeper is not liable therefor (*Ibid.*, § 2936). **Proof.**

§ 6.

The innkeeper may provide an iron safe, or other place of deposit for valuable articles, and by posting a notice thereof, may require his guests to place such valuable articles therein, or he will be relieved from responsibility for them (*Ibid.*, § 2937).¹ **Deposit of valuables.**

§ 7.

In case of loss, the presumption is want of proper diligence in the landlord. Negligence or default by the guest himself, of which the loss is a consequence, is a sufficient defence. The innkeeper cannot limit his liability by a public notice; he may adopt reasonable regulations for his own protection, and the publication of such to his guests, binds them to comply therewith (*Ibid.*, § 2938). **Presumption.**

§ 8.

The innkeeper who advertises himself as such is bound to receive, as far as he can accommodate, all persons offering themselves as guests, of good character, and who are willing to comply with his rules. Persons entertaining only **Duty to receive guests.**

¹ If the notice is not duly posted, the innkeeper continues liable as at common law. *Murchison v. Sargent*, 69 Ga. 206 (1882).

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a few individuals, or simply for the accommodation of travellers, are not innkeepers, but simply depositaries for hire, bound to ordinary diligence (*Ibid.*, § 2939).

§ 9.

Lien.

The innkeeper has a lien on the goods of all his guests for all his reasonable charges, and may retain possession until they are paid; his lien attaches though the guest has no title, or even stole the property, and the true owner must pay the charges upon that specific article before receiving the same (*Ibid.*, § 2940).

§ 10.

Checks for baggage.

It shall be the duty of the keepers of inns, hotels and other houses of public entertainment for travellers in this State, to give receipts or checks for all baggage of their guests, delivered in such inn, hotel or house of entertainment, when requested so to do by such guest; and such keeper shall not make any additional charge for receipting for, checking or keeping such baggage, so long as the owner remains a guest of the house; and if the keeper of any inn, hotel or any other public house of entertainment as aforesaid, shall violate any provision of this section, he shall be guilty of a misdemeanor (*Ibid.*, § 2941).

§ 11.

Hotel keepers on beaches to keep life-boats.

The proprietor or keeper of every hotel, boarding house or other public house or bath house on the seacoast of Georgia, where the public may resort for purposes of surf bathing, shall at all times during the surf-bathing season, keep and

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maintain at their respective establishments, in full view and accessible to bathers and guests of such house, a suitable, seaworthy life-boat or life raft, fully equipped with oars, oar-locks, life-preservers and life-ropes, and mounted upon a proper wheeled carriage; which boat or raft and appliances shall be kept at all times ready for instant use, in case of emergencies to bathers requiring the use of such appliances; and in default of complying with the provisions of this section, no proprietor or keeper of such hotel, boarding house, public house or bath house shall have the right to collect any debt from any guest of such house, the consideration of which is board, lodging or other service rendered such guest during the surf-bathing season by the proprietor or keeper of such house (*Ibid.*, § 2942).

§ 12.

In default of complying with the provisions of this section, such proprietor or keeper shall be guilty of a misdemeanor, and in addition to the penalty for such offence, he shall not have the right to collect any charge or debt from any guest of such house, the consideration of which is board, lodging or other service rendered such guest during the surf-bathing season by the proprietor or keeper (Crim. Code, § 509). **Penalty.**

§ 13.

Keepers of inns, hotels, and other houses of public entertainment for travellers, shall give receipts or checks for all baggage of their guests, delivered in such inn, hotel, or house of entertainment, when requested so to do by such **Innkeepers to give checks or receipts for baggage.**

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Misdemeanor. guest; and such keeper shall not make any additional charge for receipting for, checking or keeping such baggage, so long as the owner remains a guest of the house. A violation of the provisions of this section shall be a misdemeanor (*Ibid.*, § 603).

§ 14.

Liens. Innkeepers, boarding-house keepers, carriers, and livery stable keepers, shall have a lien for their dues on the baggage of their guests, on the goods and articles transported, and on the stock placed in their care for keeping, which shall be superior to other liens, except liens for taxes, special liens of landlords for rent, liens of laborers, and all general liens of which they had actual notice before the property claimed to be subject to lien came into their control, to which excepted liens they shall be inferior (Civil Code, § 2810).

§ 15.

Enforcement of liens on personalty. Liens on personal property, not mortgages, when not otherwise provided, shall be foreclosed in accordance with the following provisions:

1. There must be a demand on the owner, agent or lessee of the property for payment, and a refusal to pay, and such demand and refusal must be averred. If, however, no such demand can be made, by reason of the absence, from the county of his residence, of the party creating the lien on personal property, by reason of removal from the same, absconding from the same, or other reasons showing an intention to be

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absent to defeat such demand, then the party holding such lien shall not be obliged to make a demand, or affidavit thereof, but may foreclose without such demand, by stating, on oath, why no such demand was made.

2. It must be prosecuted within one year after the debt becomes due.

3. The person prosecuting such lien, either for himself or as guardian, administrator, executor or trustee, must, by himself, agent or attorney, make affidavit, showing all the facts necessary to constitute a lien under this Code, and the amount claimed to be due. If the amount claimed is under one hundred dollars, the application may be made to a justice of the peace, who may take all the other steps hereinafter prescribed, as in other cases in this court.

4. Upon such affidavit being filed with the clerk, it shall be the duty of the clerk of the Superior Court or the justice of the peace, if in his court, to issue an execution *instante* against the person owing the debt, and also against the property on which the lien is claimed, or which is subject to said lien, for the amount sworn to, and the cost, which execution, when issued, shall be levied by any sheriff of this State, or bailiff, if the amount be less than one hundred dollars, on such property subject to said lien, under the same rules and regulations as other levies and sales under execution.

5. Affidavits may be made before any officer authorized to administer an oath.

6. If the person defendant in such execution, or any creditor of such defendant, contests the amount or justice of the claim, or the existence

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of such lien, he may file his affidavit of the fact, setting forth the ground of such denial, which affidavit shall form an issue to be returned to the court and tried as other causes.

7. If only a part of the amount claimed is denied, the amount admitted to be due must be paid before the affidavit shall be received by the officer.

8. The defendant may replevy the property by giving bond and security in double the amount claimed, for the payment of the eventual condemnation money (*Ibid.*, § 2816).

§ 16.

Liens of pawnees, innkeepers, etc., how satisfied.

Liens of pawnees, innkeepers, boarding-house keepers, livery-stablemen and attorneys at law, in possession of personal property under a lien for fees, shall be satisfied according to the provisions of section 2958 of this Code, in cases where there is no notice of conflicting liens; but if there is a conflicting lien, the mode of foreclosure pointed out in section 2816 shall be pursued (*Ibid.*, § 2818).

§ 17.

Sale the by pawnee.

The pawnee may sell the property received in pledge after the debt becomes due and remains unpaid; but he must always give notice for thirty days to the pawner of his intention to sell, and the sale must be in public, fairly conducted, and to the highest bidder, unless otherwise provided by contract (*Ibid.*, § 2958).

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X.

IDAHO.

POLITICAL CODE OF 1901.

§ 1.

When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchant, innkeeper or warehouseman for transportation or safe-keeping, and are not delivered to the owner, consignee or other authorized person, the carrier, commission merchant, innkeeper or warehouseman may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid (Polit. Code, § 597).

Common carrier, innkeeper, etc., may retain goods for charges.

§ 2.

If no person calls for the property within four months from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, innkeeper or warehouseman may sell such property, or so much thereof, at public auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper, ten days (or

Sale of unclaimed property.

APPENDIX.

if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale (*Ibid.*, § 598).

§ 3.

**Unclaimed
proceeds,
where to go.**

If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner (*Ibid.*, § 599).

SESSION LAWS OF 1903.

§ 4.

**Fraudulently
obtaining
board.**

Any person who shall obtain food, lodging or other accommodations at any hotel, lodging house, furnished room, boarding house, or other eating house with intent to defraud the owner or keeper thereof by not paying for the same shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five (25) dollars and not exceeding one hundred (100) dollars or imprisonment in the county jail not less than five (5) days nor more than thirty (30) days or both in the discretion of the court (Laws of 1903, p. 410, § 1).

§ 5.

Proof that lodging, food, or other accommodation was obtained by any false pretence, or by

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any false or fictitious show of pretence of any baggage or other property or that any person absconded without paying or offering to pay for such food, lodging or other accommodation or that any such person surreptitiously removed or attempted to remove his or her baggage shall be *prima facie* proof of the fraudulent intent mentioned in section one (1) of this act (*Ibid.*, § 2).

Evidence of intent.

§ 6.

It shall be the duty of every hotel, lodging house, furnished room, boarding house or other eating-house keeper within this State, to keep a copy of the two preceding sections of this act printed in plain English type posted upon the inside entrance door of each public sleeping room in such house and no conviction shall be had under the provisions of this act unless it shall be made to appear to the court that such notice was posted upon the inside entrance of the door of the sleeping room occupied by the person or persons by whom it is alleged the crime had been committed: *Provided, however,* That when such act is committed against any persons who do not keep public sleeping rooms in connection with their eating house it shall be sufficient to show in such case that said notice was so posted in some public place at or near where guests usually paid their bills (*Ibid.*, § 3).

Copy of act to be posted.

APPENDIX.

XI.

ILLINOIS.

ANNOTATED STATUTES—SECOND EDITION, 1896.

§ 1.

**Safe—Notice
to deposit
valuables.**

That hereafter every landlord or keeper of a public inn or hotel in this State, who shall constantly have in his inn or hotel an iron safe, in good order, and suitable for the safe custody of money, jewelry, and other valuable articles, belonging to his guests or customers, shall keep posted up conspicuously, on the office, also at the inside of every entrance door of every public, sleeping, bar, reading, sitting and parlor room of his inn or hotel, notices to his guests and customers that they must leave their money, jewelry or other valuables with the landlord, his agent or clerk, for safe-keeping, that he may make safe deposit of the same in the place provided for that purpose (Annot. Stat., vol. II, p. 2163, chap. 71, par. 1).

§ 2.

**Innkeeper's
liability limited.**

That such landlord, hotel or innkeeper as shall comply with the requirements of the first section of this act, shall not be liable for any money, jewelry or other valuables, of gold, silver or rare and precious stones, that may be

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lost, if the same is not delivered to said landlord, hotel or innkeeper, his agent or clerk, for deposit, unless such loss shall occur by the hand or through the negligence of the landlord, or by a clerk or servant employed by him in such hotel or inn: *Provided*, that nothing herein contained shall apply to such amount of money and valuables as is usual, common and prudent for any such guest to retain in his room or about his person (*Ibid.*, par. 2).¹

§ 3.

Hotel, inn, and boarding-house keepers shall have a lien upon the baggage and other valuables of their guests or boarders brought into such hotel, inn or boarding house by such guests or boarders, for the proper charges due from such guests or boarders for their accommodations, board and lodgings, and such extras as are furnished at their request (*Ibid.*, p. 2581, chap. 82, par. 42). **Lien.**

§ 4.

That whenever any trunk, carpetbag, valise, bundle, package, or article of property, transported, or coming into the possession of any railroad or express company, or any other common carrier, or innkeeper or warehouseman, or private warehouse keeper, shall remain unclaimed, and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, **Sale of unclaimed property.**

¹ The burden is on a guest losing jewelry under such circumstances to prove such theft or negligence. *Elcox v. Hill*, 98 U. S. 218, 25 L. Ed. 103 (1878).

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and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier, innkeeper, warehouseman or private warehouse keeper to sell such article at public auction, after giving the owner or consignee fifteen days' notice of the time and place of sale, through the post office, and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the overplus, if any, shall be paid to the owner or the consignee upon demand (*Ibid.*, p. 3959, chap. 141, par. 1).

§ 5.

Defrauding innkeeper. Any person who shall obtain food, lodging or other accommodation at any hotel, inn, boarding or eating house with intent to defraud the owner or keeper thereof, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days (Annot. Stat., p. 1292, chap. 38, § 243).²

² This statute being a penal one must be strictly construed. *Hutchinson v. Davis*, 58 Ill. App. 358 (1895). Refusal to pay damages for a breach of a contract to board does not come within the statute; only refusal to pay for board actually furnished. Therefore no prosecution can be maintained for a refusal to pay for a meal not obtained, though a guest, under his contract, it being after mealtime, was liable to pay for it. *Sundmacher v. Block*, 39 Ill. App. 553 (1891).

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§ 6.

Proof that lodging, food or other accommodation was obtained by false pretence, or by false or fictitious show or pretence of baggage, or that the party refused or neglected to pay for such food, lodging, or other accommodation on demand, or that he or she absconded or left the premises without paying or offering to pay for such food, lodging or other accommodation, or that he or she surreptitiously removed or attempted to remove his or her baggage, shall be *prima facie* proof of the fraudulent intent mentioned in section one of this act, but this act shall not apply to regular boarders, nor when there has been an agreement for delay in payment (*Ibid.*, § 244).³

**Prima facie
proof of
fraud.**

³ In order to avoid declaring the statute unconstitutional as creating imprisonment for debt, the court has interpreted the statute as requiring both refusal to pay (or absconding) and surreptitious removal of baggage in order to constitute the *prima facie* proof spoken of in the act. *Hutchinson v. Davis*, 58 Ill. App. 358 (1895). Surreptitious removal involves fraud and concealment; and it is not committed when the baggage is removed openly, even though the removal was not in fact seen by the innkeeper. *Ibid.*

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XII.

INDIANA.

BURNS' ANNOTATED STATUTES OF 1901.

§ 1.

**Defrauding
hotels and
boarding
houses.**

Any person or persons who shall obtain food, lodging, entertainment or other accommodations at any hotel, inn, restaurant, rooming, boarding or eating house with intent to defraud the owner or keeper thereof, shall be fined not exceeding twenty-five dollars (\$25), or imprisoned in the county jail or city workhouse not exceeding sixty days, or both (Annot. Stat., § 7254a).

§ 2.

**Baggage re-
tained for
payment.**

Any person or persons boarding or lodging, who have boarded or lodged, at any hotel, inn, boarding, eating, lodging house or restaurant, as provided in this act, shall not be permitted to remove any trunk, valise or other baggage therefrom, which he or they may have therein, until all claims for bills, lodging, entertainment or accommodation have been fully paid and satisfied in accordance with the regular advertised or special contract rates of said hotel, inn, boarding, eating, lodging house or restaurant, and any person or persons who shall remove or attempt to remove any such trunk, valise or baggage, or

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other article of value, without satisfying said claims or bills, shall be guilty of the same offences named in section one (1) of this act, and shall be punished accordingly (*Ibid.*, § 7254b).¹

§ 3.

The owner or keeper of any hotel, inn, restaurant, boarding or eating house, as provided in this act, shall, after demand for payment be made of the person or persons owing any such claims or bills, as set out in the preceding section of this act, have a lien against the personal property and the wages due of any person or persons who may owe said owner or keeper for food, lodging, entertainment or other accommodation, to the extent only of his said claim, and the property may be sold to satisfy such claim, by said owner or keeper after obtaining judgment for the same in any court of competent jurisdiction and posting a written notice on the outer door of his hotel, inn, restaurant, boarding or eating house, at least ten days before the day of sale at public outcry to the highest bidder, and any sum of money remaining from said sale, after satisfying the claim, costs and expenses of sale, shall be turned over to the person or persons whose property was sold. When proper divisions of such property can be made, such part only as shall be necessary to satisfy the claim, cost and expenses shall be sold (*Ibid.*, § 7254c).

Lien on baggage, sale.

Lien even against wages of debtor.

¹ In *State v. Engle*, 156 Ind. 339, 58 N. E. 698 (1900) it was held that the words, "as provided in this act," did not refer to the "intent to defraud," but referred to the class of proprietors to be protected, and intent to defraud is not essential, and need not be alleged in an affidavit of information.

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XIII.

IOWA.

ANNOTATED CODE OF 1897.

§ 1.

Hotel and inn-keepers—liability — lien.

Keepers of hotels, inns and eating houses, who shall provide and keep therein a good and sufficient vault or safe for the deposit of money, jewels and other valuables, and shall provide a safe and commodious place for the baggage, clothing and other property belonging to their guests and patrons, and keep posted up in a conspicuous place in the office or other public room, and in the guests' private apartments therein, printed notices, stating that such places for safe deposit are provided for the use and accommodation of the inmates thereof, shall not be liable for the loss of any money, jewels, valuables, baggage or other property not deposited with them, unless such loss shall occur through the fault or negligence of such landlord or keeper, or his agent, servant or employee, but nothing herein contained shall apply to such reasonable amount of money, nor to such jewels, baggage, valuables or other property as is usual, fit and proper for any such guests to have and retain in their apartments or about their persons. Hotel, inn or eating-house keepers shall

APPENDIX.

have a lien upon, and may take and retain possession of, all baggage and other property belonging to or under the control of their guests, which may be in such hotel, inn or eating house, for the value of their accommodations and keep, and for all money paid for or advanced to, and for such extras and other things as shall be furnished, such guest, and such property so retained shall not be exempt from attachment or execution to the amount of the reasonable charges of such hotel, inn or eating-house keeper, against such guest, and the costs of enforcing the lien thereon (Annot. Code, § 3138).¹

§ 2.

Any person who shall obtain food, lodging or other accommodation at any hotel, inn or boarding or eating house, with intent to defraud the owner or keeper thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days (*Ibid.*, § 5076).

**Frauds upon
hotel keepers.**

§ 3.

Proof that lodging, food or other accommodation was obtained by false pretence, or by false or fictitious show or pretence of baggage, or that the party refused or neglected to pay for such food, lodging or other accommodation on demand, or that he absconded or left the premises, without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to re-

Evidence.

¹ The lien covers property of a third person brought to the inn by the guest. *Brown Shoe Co. v. Hunt*, 103 Ia. 586, 72 N. W. 765 (1897).

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move his baggage, shall be presumptive evidence of the fraudulent intent mentioned in the preceding section, but this section shall not apply to regular boarders, nor when there has been an agreement for delay in payment (*Ibid.*, § 5077).

§ 4.

Infringement of civil rights.

All persons within this State shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, chop houses, eating houses, lunch counters and all other places where refreshments are served, public conveyances, barber shops, bath houses, theatres and all other places of amusement. Any person who shall violate the provisions of this section by denying to any person, except for reasons by law applicable to all persons, the full enjoyment of any of the accommodations, advantages, facilities or privileges enumerated herein, or by aiding or inciting such denial, shall be guilty of a misdemeanor (*Ibid.*, § 5008).

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XIV.

KANSAS.

GENERAL STATUTES OF 1897.

§ 1.

Any . . . hotel keeper . . . having a lien **Lien.**
upon goods which may have remained in store
or in the possession of such bailee for six
months or more, may proceed to sell such goods,
or so much thereof as may be necessary to pay
the amount of the lien and expenses, according
to the provisions of this act (General Stats.,
chap. 120, § 19).

§ 2.

Before any such property shall be sold, if the **Owner must**
name and residence of the owner thereof be **be notified**
known, at least twenty days' notice of such sale **before sale.**
shall be given him in writing, either personally
or by mail, or by leaving a notice in writing at
his residence or place of doing business; but if
the name and residence be not known, the per-
son having the possession of such property shall
cause a notice of the time and place of sale, and
containing a description of the property, to be
published at least once a week for the space of
three weeks successively, in a newspaper if there
be one published in the county where such sale
is advertised to take place. If there be no news-

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paper published in such county, then said notice shall be published in some newspaper of general circulation in such county. If the value of the property does not exceed twenty dollars, such notice may be given by written or printed hand-bills posted up in at least five public places in the township or city where the bailee resides or the sale is to take place, one of which shall be in a conspicuous part of the bailee's place of business (*Ibid.*, § 22).

§ 3.

Sales for cash. All sales under this act shall be at public auction, for cash (*Ibid.*, § 23).

§ 4.

Proceeds of sale. The proceeds of such sale, after payment of (the lien) charges, and the expenses of publication and sale, shall, if the owner be absent, be deposited with the treasurer of the county where the sale takes place by the person making such sale, he taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto (*Ibid.*, § 24).

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XV.

KENTUCKY.

COMPILED STATUTES OF 1894.

§ 1.

That no innkeeper in this Commonwealth who shall constantly have in his inn an iron safe, or suitable vault, in good order, and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones and bullion, and who shall keep a copy of this law, printed by itself, in large, plain, English type and framed, constantly and conspicuously suspended in the office, barroom, saloon, reading, sitting and parlor room of his inn; and also a copy, printed by itself, in ordinary-size plain English type, posted upon the inside of the entrance door of every public sleeping room of his inn, shall be liable for the loss of any such article aforesaid suffered by any guest, unless such guest shall have first offered to deliver such property lost by him to such innkeeper for custody in such iron safe, and such innkeeper shall have refused or omitted to take it, and deposit it in such safe for its custody, and to give such guest a receipt therefor; but every innkeeper shall be liable for any loss of the above-enumerated articles by a guest in his inn, caused by the theft or negli-

Liability.

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gence of the innkeeper, or of any of his servants, anything to the contrary in this law notwithstanding (Comp. Stats., § 2176).

§ 2.

**Houses of
private en-
tertainment.**

Any person other than the keeper of a tavern or house of private entertainment, who shall entertain in his house another, or furnish him with diet or storage for his goods, not making an agreement for compensation therefor, shall not recover anything against the person so entertained or furnished with diet or storage, or against his estate, but the person so furnishing another shall be considered as doing the same of courtesy (*Ibid.*, § 2178).

§ 3.

Keeper of.

Any person not a tavern keeper, who shall furnish for compensation lodging or diet to travellers, or to one boarding in his house, or provender in his stable or on his land for horses or mules, shall be deemed the keeper of a house of private entertainment. No license shall be required to keep a house of private entertainment (*Ibid.*, § 2179).

§ 4.

**Tavern li-
cense.**

License to keep a tavern outside of an incorporated city or town shall be granted only to persons who are prepared with houses, bedding, stabling and provender sufficient to accommodate the public, and shall not be granted to anyone unless the keeping of a tavern at the place proposed is necessary for the accommodation of the public, nor until the applicant shall take

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an oath, in open court, that he, in good faith, intends to keep a tavern for the accommodation of the public (*Ibid.*, § 4206).¹

§ 5.

That all hotel keepers, innkeepers, boarding-house keepers and keepers of houses of private entertainment shall have a lien on all baggage and all personal property owned by, and brought to, such house of entertainment by the person receiving the board, nursing, care or attention from such landlord, for the contract price of such board, care and attention as is received, and in case of no contract price for such board, nursing, care or attention, then for a reasonable price for same (Acts of 1896, chap. 12, § 1).

Lien on baggage.

The first section of this act is not intended to repeal section two thousand one hundred and seventy-eight of the Kentucky statutes (*Ibid.*, § 2).

§ 6.

When any such lien exists under section one of this act in favor of any person, he may, before a justice of the peace or a judge of the quarterly court of the county where the debt is created, by himself or agent or attorney, make affidavit to the amount due him and in arrear for board, nursing, keeping, care and attention to the person so receiving same, and describing, as near as may be, the baggage or other personal property owned by, and brought to such house

Affidavit to be made.

¹ See *Commonwealth v. Shortridge*, 3 J. J. Marsh. 638 (1830); *Jackson v. Commonwealth*, 7 Bush, 99 (1870); *Commonwealth v. Camp*, 4 B. Mon. 385 (1854).

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of entertainment; and, thereupon such officer shall issue a warrant, directed to the sheriff or any constable or town marshal of said county, authorizing him to levy upon and seize the said goods for the amount due, with interest and costs; but if the said goods have been removed from said place with the consent of such landlord, the lien herein provided for shall not continue longer than ten days from and after such removal (*Ibid.*, § 3).

§ 7.

Proceedings. The proceedings under a warrant shall in all respects be the same as in cases of distress warrant, and none of the said goods shall be exempt from seizure or sale (*Ibid.*, § 4).

§ 8.

Fine imposed for defrauding. Any person who shall obtain food, lodging or other accommodation at any hotel, inn, boarding house, or house of private entertainment with intent to defraud the keeper thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days, either or both, in the discretion of the court or jury trying the case (*Ibid.*, § 5).

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XVI.

LOUISIANA.

VOORHIES' REVISED CIVIL CODE OF 1889.

§ 1.

An innkeeper is responsible as depositary for the effects brought by travellers who lodge at his house; the deposit of such effects is considered as a necessary (Rev. Civ. Code, Art. 2965). **Responsibility of innkeeper.**

§ 2.

An innkeeper is responsible for the effects brought by travellers, even though they were not delivered into his personal care, provided, however, they were delivered to a servant or person in his employment (*Ibid.*, Art. 2966). **Delivery of goods.**

§ 3.

He is responsible if any of the effects be stolen or damaged, either by his servants or agents, or by strangers going and coming in the inn (*Ibid.*, Art. 2967). **Loss or injury.**

§ 4.

Every landlord or keeper of a public inn or hotel, shall be required to provide with an iron chest or other safe deposit for valuable articles **Safe.**

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belonging to his guests or customers, and each landlord or hotel keeper shall keep posted upon his doors and other public places in his house of entertainment, written or printed notices to his guests and customers that they must leave their valuables with the landlord, his agent or clerk, for safe-keeping, that he may make safe deposit of the same in the place provided for that purpose (*Ibid.*, Art. 2968).

§ 5.

Limitation of liability.

Every landlord, hotel or innkeeper who shall comply with the requirements of the preceding articles, shall not be liable for any money, jewelry, watches, plate, or other things made of gold or silver, or of rare and precious stones or for other valuable articles of such description as may be contained in small compass, which may be abstracted or lost from any such public inn or hotel, if the same shall not be left with the landlord, his clerk or agent, for deposit, unless such loss shall occur through the fraud or negligence of the landlord, or some clerk or servant employed by him in such inn or hotel; provided, however, that the provisions of this article shall not apply to a wearing watch, or such other articles of jewelry as are ordinarily worn about the person (*Ibid.*, Art. 2969).

§ 6.

Forcible theft.

He is not responsible for what is stolen by force and arms, or with exterior breaking open of doors, or by any other extraordinary violence (*Ibid.*, Art. 2970).

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§ 7.

The deposition on oath or affirmation of a single competent and credible witness as to the deposit at inns, may be admitted as a good proof, even when the value of the thing so deposited exceeds five hundred dollars; but the judge must admit this kind of proof, in that case, with circumspection, according to the circumstances of the fact and the condition of the parties (*Ibid.*, Art. 2971). **Evidence.**

§ 8.

Privilege is a right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages (*Ibid.*, Art. 3186). **Privilege or lien.**

§ 9.

The debts which are privileged on all the movables in general, are those hereafter enumerated, and are paid in the following order: **Innkeepers entitled to.**

1. Funeral charges.
2. Law charges.
3. Charges . . . occasioned by the last sickness, . . .
4. Wages of servants. . . .
5. Supplies of provisions made to the debtor or his family . . . during the last year, by keepers of boarding houses and taverns.
6. Salaries in general.
7. Total rights due to wives by their husbands (*Ibid.*, § 3191).

§ 10.

The privilege of keepers of boarding houses, taverns, and other persons comprised in this **Extent of.**

APPENDIX.

class, extends to the last year due, and so much as has expired of the current year (*Ibid.*, § 3213).

§ 11.

Privilege given innkeepers on property of persons who take their board or lodging with them.

Innkeepers and all others who let lodgings or receive or take boarders have a privilege, or more properly, a right of pledge on the property of all persons who take their board or lodging with them, by virtue of which they may retain property, and have it sold, to obtain payment of what such persons may owe them on either accounts above mentioned, and this privilege shall extend to extras not to exceed ten (\$10) dollars supplied by the proprietors of hotels, inns and boarding-house keepers (*Ibid.*, § 3233, as amended, Acts of 1896, p. 35, and Acts of 1898, p. 157).

§ 12.

On property of third person.

Innkeepers, hotel, boarding-house and lodging-house keepers enjoy this privilege on all the property which the sojourner has brought to their place, whether it belongs to him or not, because the property so brought into their place has become pledged to them by the mere fact of its introduction into their place (*Ibid.*, § 3234, as amended 1896).

§ 13.

Who are travellers.

The term travellers applies to strangers and such as being transiently in a place where they have no domicile, take their board and lodging at an inn (*Ibid.*, § 3235).

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§ 14.

Whenever any trunk, carpetbag, valise, box, bundle or other baggage which shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and shall remain unclaimed or unredeemed for the period of six months, such keeper may proceed to sell the same at public auction, and without judicial proceedings, and out of the proceeds of such sale may retain the amount due him for board, lodging and extras, and the charges for storage, if any, and the expense of advertising and sale thereof, but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpetbag, valise, box, bundle or other baggage as near as may be; the name of the owner, if known; the name of said keeper, and the time and place of sale; and the expense incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle or other baggage in a ratable proportion according to the value of such property, or thing or article sold; and in case any balance arising upon such sale shall not be claimed by the rightful owner within one week from the day of said sale the same shall be paid to the Charity Hospital of New Orleans (*Ibid.*, § 3236, amended Acts of 1896, p. 35).

Sale of unredeemed property.

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§ 15.

Prescription. *Prescription* is a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law. The prescription by which debts are released, is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim. The following actions are prescribed by one year:

* * * * *

That of innkeepers and such others, on account of lodging and board which they furnish (*Ibid.*, Arts. 3457, 3459, 3534).

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XVII.

MAINE.

REVISED STATUTES OF 1903.

§ 1.

Every innholder shall, at all times, be furnished with suitable provisions and lodging for strangers and travellers, and with stable room, hay and provender for their horses and cattle; and with pasturing, if it is required by the terms of his license; and he shall grant such reasonable accommodations as occasion requires, to strangers, travellers and others (Rev. Stat., chap. 29, § 5).

Duty of innholder to provide entertainment.

§ 2.

In case of loss by fire, innholders are answerable to their guests only for ordinary and reasonable care in the custody of their baggage or other property (*Ibid.*, § 6).¹

Liability in case of fire.

§ 3.

Innholders are not liable for losses sustained by their guests, except for wearing apparel, articles worn or carried upon the person to a reasonable amount, personal baggage and money necessary for travelling expenses and personal

Liability of innholder for guests' losses.

See *Burnham v. Young*, 72 Me. 273 (1881).

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use, unless upon delivery or offer of delivery, by such guests, of their money, jewelry or other property, to the innholder, his agent or servants, for safe custody (*Ibid.*, § 7).²

§ 4.

**Losses by
negligence of
guests.**

An innholder against whom a claim is made for loss sustained by a guest, may in all cases show that such loss is attributable to the negligence of the guest, or to his non-compliance with the regulations of the inn; *provided*, that such regulations are reasonable and proper, and are shown to have been brought to the notice of the guest (*Ibid.*, § 8).

§ 5.

**Duties of
victuallers.**

Every victualler has all the rights and privileges and is subject to all the duties and obligations of an innholder, except furnishing lodging for travellers, and stable room, hay or provender for cattle (*Ibid.*, § 9).

§ 6.

**Licensing
board to prosecute; — any
citizen may
prosecute.**

The licensing board shall prosecute for any violations of the foregoing sections that come to their knowledge, by complaint, indictment or action of debt; and all penalties recovered shall inure to the town where the offence is committed. Any citizen of the State may prosecute for any violation of the preceding sections in the

² Forty dollars for travelling expenses, and a gold watch, pair of gold bracelets, a gold thimble, three gold rings, and a gold neck-pin taken for the owner's personal use are within the exception. *Noble v. Milliken*, 74 Me. 225, 43 Am. Rep. 581 (1885).

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same manner as the licensing board may prosecute (*Ibid.*, § 13).

§ 7.

Innholders or keepers of boarding houses have a lien on the goods and personal baggage of their guests and boarders, to secure the payment of any money due from them for board or lodging, and may enforce the same by a sale of such goods or baggage, in the manner following. After such goods or personal baggage have remained in the possession of such innholder or boarding-house keeper for six months, unredeemed, they may be sold at auction to pay the sum due for board or lodging, and the expense of advertising and selling the same. Such innholder or boarding-house keeper shall give thirty days' notice of the time and place of such sale, in a newspaper published in the town where such articles are held, if any, otherwise notice thereof shall be posted in three conspicuous places therein; said notice shall give a description of such articles, and the name of the owner; and the proceeds of sale, after deducting all charges and expense of advertising and notice, shall be applied in satisfaction of the claim upon which such articles are sold, and the balance, if any, shall be held for the benefit of the person entitled thereto. All such sales shall be recorded in the office of the town clerk where the sale takes place, in a suitable book open to public inspection, in which the articles sold shall be correctly described, with the charges and expenses of advertising and selling, and the prices at which they were sold (*Ibid.*, chap. 93, § 65).

Lien on goods and personal baggage.

Goods and baggage, unredeemed, may be sold.

Notice of sale.

Proceeds of sale, how appropriated.

Record of sales shall be kept.

APPENDIX.

§ 8.

**Penalty for
defrauding
innkeepers
and boarding-
house keepers.**

Whoever puts up at an inn, hotel or boarding house, and without having an express agreement for credit, procures food, entertainment or accommodation without paying therefor, and with intent to defraud the owner or keeper of the inn, hotel or boarding house out of the pay for the same; or, with intent to cheat or defraud such owner or keeper out of the pay therefor, obtains credit at an inn, hotel or boarding house for such food, entertainment or accommodation by means of any false show of baggage or effects brought thereto; or with such intent, removes or causes to be removed any baggage or effects from an inn, hotel or boarding house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars (*Ibid.*, chap. 127, § 5).

§ 9.

**Copies of law
to be posted.**

Innholders and keepers of hotels and boarding houses shall post up a printed copy of sections five and six, in a conspicuous place in each room in their inns, hotels and boarding houses. Judges of municipal and police courts and trial justices shall have jurisdiction of all offences arising under section five, where the amount of which any such innkeeper or boarding-house keeper or the owners thereof have been thus defrauded, does not exceed the sum of twenty dollars (*Ibid.*, § 6).

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§ 10.

If an innholder, confectioner, or keeper of a shop, boarding house, or livery stable, gives credit for food, drink or horse or carriage hire, to any pupil of a college or literary institution in violation of its rules, he forfeits a sum equal to the amount so credited, whether it has been paid or not, to be recovered in an action of debt by the treasurer of such institution; half to its use, and half to the town where it is located; and no person shall be licensed by the municipal officers for any of said employments, if it appears that within the preceding year he had given credit contrary to the provisions hereof (*Ibid.*, chap. 15, § 21).

Innholders, stable keepers, and certain others, not to give credit to students.

Penalty.

§ 11.

If an innholder or victualler, on the Lord's Day, suffers any persons, except travellers, strangers or lodgers, to abide in his house, yard or field, drinking or spending their time idly, at play or doing any secular business, except works of charity or necessity, he shall be punished by fine not exceeding four dollars for each person thus suffered to abide; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offence; and upon a third conviction, he shall also be incapable of holding any license; and every person so abiding shall be fined not exceeding four dollars for each offence (*Ibid.*, § 26).

Innholders and victuallers shall not allow gambling, diversion, or business, on the Lord's Day.

§ 12.

No person wearing boots or shoes with spikes or calks in the sole or heel thereof shall enter

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**Wearing of
spiked boots
and shoes in
public places
forbidden.**

any public building, hotel, railroad station, railroad car or steamboat, without special permission from the owner, lessee, person in charge thereof, or some officer, agent or servant of either of them, or having entered, shall remain therein after having been requested to leave such public building, hotel, railroad station, railroad car or steamboat, by the owner, lessee, person in charge thereof or some officer, agent or servant of either of them (*Ibid.*, chap. 128, § 28).

§ 13.

**Penalty for
violation.**

Whoever violates either of the provisions of section twenty-eight shall, on complaint and conviction, be fined not less than one, nor more than ten dollars, but a person having entered as aforesaid without permission and remaining after having been requested to leave as above provided, shall only be convicted of violating one of the provisions of section twenty-eight (*Ibid.*, § 29).

§ 14.

**Printed copies
of secs. 28 to
31 must be
posted in
public places.**

No person shall be convicted of any offence under section twenty-eight unless a printed copy of sections twenty-eight to thirty-one inclusive shall have been posted in a conspicuous place in the public building, hotel, railroad station, railroad car or steamboat where said offence is committed, for at least thirty days prior to the commission of said offence, and is also posted at the time of said offence (*Ibid.*, § 30).

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§ 15.

Whoever wilfully destroys, defaces or tears down any such printed copy posted under the preceding section, shall forfeit not less than one, nor more than ten dollars to be recovered on complaint (*Ibid.*, § 31).

**Penalty for
destroying
notices.**

APPENDIX.

XVIII.

MARYLAND.

PUBLIC GENERAL LAWS OF 1904.

§ 1.

**Fraudulently
obtaining
board, etc.**

Every person who shall by any false or fraudulent representations, or by any false show of baggage, goods or chattels, which are calculated to deceive any hotel proprietor, keeper or manager, obtain lodging or credit, or the use of any horse or vehicle, or food or stabling for a horse or horses in any hotel in this State, or from the keeper of any livery stable, and shall subsequently refuse, decline or fail to pay for his credit, board or lodging, or use of horse or food or stabling for horse furnished him, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment in jail for a term of not less than one month nor more than six months, or by both such fine and imprisonment in the discretion of the court (Pub. Gen. Laws, Art. 27, § 120).

§ 2.

Every person who shall at any hotel, inn, boarding house or livery stable receive or cause to be furnished any food or accommodation for

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man or beast, and shall fraudulently fail to pay for the same, and every person who shall obtain credit at any hotel, inn or boarding house by the use of any false pretence or device, or by fraudulently depositing at such hotel, inn or boarding house any baggage or property of value less than the amount of such credit or of the bill by such person incurred; and every person who, after obtaining credit or accommodation at any hotel, inn or boarding house, shall abscond or fraudulently depart or remove his baggage therefrom without discharging the debt as aforesaid incurred shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars or by imprisonment in jail for a term of not less than one month nor more than six months, or by both such fine and imprisonment in the discretion of the court (*Ibid.*, § 121).

The same subject.

§ 3.

Any ordinary or innkeeper in any city or town, having a population of more than five hundred inhabitants, who shall provide an iron safe or other secure depository for the keeping of the money, jewelry and plate belonging to his guests, and who shall take charge for safe keeping of such money, jewelry and plate shall be liable for the full value of the same if lost or stolen while thus in his charge; to be recovered before a justice of the peace if such value does not exceed the sum of one hundred dollars, and if over that sum by action of *assumpsit* in any court having jurisdiction, unless the loss occurred through fire proved to have happened

Depository for valuables.

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without any negligence upon the part of himself or his agent (*Ibid.*, Art. 71, § 5).¹

§ 4.

**Exemption
from liability
for valuables
not so de-
posited.**

If any ordinary or innkeeper referred to in the preceding section shall cause written or printed notices to be put in his chambers and other conspicuous places about his house notifying his guests of the purport of the preceding section and requesting them to deposit their money and plate with him or his agent to be designated by such notice, then he shall not be responsible for the loss by robbery or otherwise; provided, such ordinary or innkeeper can prove that he has complied with the provisions of this and the preceding section, unless such loss occurred from collusion or positive negligence on the part of such ordinary or innkeeper or his agent (*Ibid.*, § 6).²

§ 5.

**Hotel and
innkeepers
shall have a
lien upon bag-
gage, etc., for
non-payment
of board and
lodging.**

For the price or value of any food or accommodation furnished to any person at any hotel, boarding house, inn or ordinary in this State, the proprietor or keeper of such hotel, inn or ordinary shall have a lien upon all baggage and other property belonging to or under the control of such person and in such hotel, boarding house, inn or ordinary and may keep possession of the same until the price or value of such goods or

¹ This section does not cover clothing and other articles of small value. *Treiber v. Burrows*, 27 Md. 130 (1867).

² Under these sections a guest is not required to deposit in the safe of an office in a hotel a sum of money reasonably necessary for travelling expenses; what sum is necessary is a question for the jury. A watch is not to be deposited under these provisions. *Maltby v. Chapman*, 25 Md. 310 (1866).

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accommodation shall have been fully paid, whether then due or to become due; and for the purpose of collecting the said debt after the same shall have been due for a period of fifteen days may sell such baggage or other property for cash at public sale, upon giving notice of the time, place and terms of sale by advertisement published at least twice in one or more newspapers published in the city or county wherein the said hotel, inn or ordinary is situated, the first publication to be not less than ten days before such sale, and the proceeds of sale to be applied, after payment of expenses, to the discharge of such indebtedness, and the balance, if any, to be paid over to the person or persons entitled thereto (*Ibid.*, § 7).

§ 6.

Any person taking boarders or lodgers into his house and renting to them a room or furnishing them with board or both shall have a lien upon any personal effects, goods or furniture brought upon the premises in pursuance of such contracting for room or board, and it shall be lawful to take and retain possession of the same until such board or lodging shall have been fully paid for whether due or not; and such personal effects, goods and furniture may be sold, upon reasonable notice of not less than ten days after the debt for such board or lodging shall have become due and payable, at either public or private sale to satisfy such debt, the proceeds after paying expenses of such sale to be applied in liquidation of such indebtedness, and the balance, if any, paid over to such debtor (*Ibid.*, § 8).

Boarding-house keepers to have lien upon personal effects of boarders or lodgers for board and lodging; sale of such effects for satisfaction of lien.

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§ 7.

Married woman to have same rights and powers under section 8 as feme sole.

A married woman may as landlady and proprietress contract with anyone entering her house for board or lodging or both, and have and pursue the legal remedies given in section 8 the same as if she were a *feme sole*, and shall further have and enjoy all the powers, rights and remedies with respect to the renting, keeping and conducting of such boarding or lodging house as if she were a *feme sole*, and it shall not be necessary for her husband to join in any contract with reference thereto (*Ibid.*, § 9).

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XIX.

MASSACHUSETTS.

REVISED LAWS OF 1902.

§ 1.

Whoever makes any distinction, discrimination or restriction on account of color or race or, except for good cause, applicable alike to all persons of every color and race, relative to the admission of any person to, or his treatment in, a theatre, skating rink or other public place of amusement, licensed or unlicensed, or in a public conveyance or public meeting, or in an inn, barber shop or other public place kept for hire, gain or reward, licensed or unlicensed, or whoever aids or incites such distinction, discrimination or restriction, shall, for each offence, be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment, and shall forfeit to any person aggrieved thereby not less than twenty-five nor more than three hundred dollars; but such person so aggrieved shall not recover against more than one person by reason of any one act of distinction, discrimination or restriction (Rev. Laws, chap. 212, § 89).

**Color or race
discrimina-
tion.**

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§ 2.

**Innholders,
etc., to have
suitable food,
rooms, etc.,
for travellers.**

Every innholder and every common victualler shall at all times be provided with suitable food for strangers and travellers. Every innholder shall also have upon his premises suitable rooms, with beds and bedding, for the lodging of his guests, and, if the licensing board so requires, be provided with stable room, hay and provender for their horses and cattle (*Ibid.*, chap. 102, § 5).

§ 3.

**Innholder's
license to be
refused, when.**

An innholder's or common victualler's license shall not be granted or issued unless at the time of making application therefor the applicant has upon his premises the necessary implements and facilities for cooking, preparing and serving food for strangers and travellers; and, if an applicant for an innkeeper's license, unless he also has the rooms, beds and bedding and stable room and provender for horses and cattle required by law (*Ibid.*, § 6).

§ 4.

**Penalty on
innholder for
refusal to re-
ceive travel-
lers.**

An innholder, who, upon request, refuses to receive and make suitable provision for a stranger or traveller, and also for his horses and cattle, when he may under the provisions of this chapter be legally required so to do, shall be punished by a fine of not more than fifty dollars; and shall also forfeit his license (*Ibid.*, § 7).

§ 5.

**On common
victualler for
refusal to sup-
ply food.**

A common victualler who, upon request, upon any other than the Lord's Day, refuses to supply food to a stranger or traveller, shall be punished

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by a fine of not more than fifty dollars; and shall also forfeit his license (*Ibid.*, § 8).

§ 6.

An innholder shall not be liable for losses sustained by a guest, except of wearing apparel, articles worn or carried on the person, personal baggage and money necessary for travelling expenses and personal use; nor shall such guest recover of an innholder more than one thousand dollars as damages for any such loss; but an innholder shall be liable in damages to an amount not exceeding three thousand dollars for the loss of money, jewels and ornaments of a guest specially deposited for safe keeping, or offered to be so deposited, with such innholder, person in charge at the office of the inn or other agent of such innholder authorized to receive such deposit. The provisions of this section shall not affect the innholder's liability under the provisions of any special contract for other property deposited with him for safe keeping after being fully informed of its nature and value, nor increase his liability in case of loss by fire or overwhelming force beyond that specified in the following section (*Ibid.*, § 10).

Liability of innholder for loss of property.

§ 7.

In case of loss by fire or overwhelming force, innholders shall be answerable to their guests only for ordinary and reasonable care in the custody of their baggage or other property (*Ibid.*, § 11).

For loss by fire.

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§ 8.

Penalty for fraudulently procuring entertainment at an inn.

Whoever puts up at an inn or boarding house and, without having an express agreement for credit, procures food, entertainment or accommodation without paying therefor, and with intent to cheat or defraud the owner or keeper thereof; or, with such intent, obtains credit at an inn or boarding house for such food, entertainment or accommodation, by means of any false show of baggage or effects brought thereto; or, with such intent, removes or causes to be removed any baggage or effects from an inn or boarding house, while a lien exists thereon for the proper charges due from him for fare and board furnished therein, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than three months. Boarding-house keepers shall post a copy of this section in a conspicuous place in each room of their boarding houses (*Ibid.*, § 12).

§ 9.

Notice to be posted.

Innholders shall post a printed copy of this and the three preceding sections in a conspicuous place in each room of their inns (*Ibid.*, § 13).

§ 10.

Disposition of baggage in possession of innholders, etc.

An innholder, after retaining for six months from the time of departure of a guest from his inn any trunks, bags, valises, parcels, clothing, goods or other personal property of a guest which has been abandoned by such guest, or which such innholder retains by virtue of his lien thereon for the unpaid board, lodging and other charges of such guest, may sell the same

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by public auction upon the premises of the inn, notice of the time and place of sale first being posted in a conspicuous place in the office of the inn for four weeks prior to the date of such sale, and published once in each of three successive weeks in a newspaper, if any, published in the city or town in which the inn is situated; otherwise in a newspaper published in the county in which the inn is situated, the first publication of such notice to be not less than twenty-one days before the day of sale. A copy of such notice shall be sent by mail prepaid and duly registered and addressed to said guest at the residence registered by him in the register of such inn. Such notice shall contain a descriptive list of all such property and of all such specific marks as may serve to identify such property, and the name of the guest so far as known to such innholder (*Ibid.*, § 14).

§ 11.

The proceeds of such sale, after deducting all reasonable charges and expenses incurred in the storage and sale of such property, shall be applied to the discharge of the lien of such innholder thereon for the board, lodging and other charges of such guest, and any proceeds remaining thereafter shall be paid to the treasurer and receiver general for the use of the commonwealth (*Ibid.*, § 15).

**Disposition of
proceeds of
sale.**

§ 12.

If, within three years after such sale, the owner of any such property claims it and proves his ownership thereof, the said proceeds, after deducting all reasonable charges and expenses,

**Balance of
proceeds to
be paid to
owner.**

APPENDIX.

shall be paid over to him by the treasurer and receiver general (*Ibid.*, § 16).

§ 13.

**Negligence of
guests a de-
fence.**

An innholder against whom a claim is made for loss sustained by a guest may show that such loss is attributable to the negligence of the guest or to his failure to comply with the regulations of the inn, if they are reasonable and proper and are shown to have been duly brought to the notice of the guest by the innholder (*Ibid.*, § 17).¹

§ 14.

**Innholders'
signs.**

Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar or store, or in a conspicuous place near the same, with his name legibly inscribed thereon in large letters and the employment for which he is licensed inscribed thereon, and upon neglect thereof shall forfeit twenty dollars (*Ibid.*, § 18).

§ 15.

**Seamen ex-
empt from
lien.**

A seaman or mariner who has shipped or entered into a contract for a voyage from a port in this commonwealth shall not be liable to arrest on mesne process on account of a debt to a landlord or boarding-house keeper; nor shall a landlord or boarding-house keeper detain or have a lien upon his wearing apparel

¹The innkeeper cannot escape liability by the provisions of this section unless the loss was actually caused by the guest's negligence. *Burbank v. Chapin*, 140 Mass. 123, 2 N. E. 934 (1885).

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or other property, or hinder, obstruct or delay him in the performance of such contract, under a penalty of not more than two hundred dollars (*Ibid.*, chap. 66, § 4).

§ 16.

Whoever, keeping a house, shop, cellar or place of public entertainment or refreshment, entertains therein on the Lord's Day any persons other than travellers, strangers, or lodgers, or suffers such persons on said day to abide or remain therein, or in the yards, orchards, or fields appertaining to the same, drinking or spending their time idly or at play, or in doing any secular business, shall be punished by a fine of not more than fifty dollars for each person so entertained or suffered so to abide or remain; and upon subsequent conviction, by a fine of not more than one hundred dollars; and if convicted three times, he shall thereafter be disqualified to hold a license (*Ibid.*, chap. 98, § 6).

**Persons keep-
ing places of
entertain-
ment, etc., to
entertain only
travellers,
etc.**

§ 17.

An innholder or other person who, being licensed to keep a place of public entertainment, entertains or suffers to remain or be in his house, yard or other places appurtenant, any persons other than travellers, strangers or lodgers in such house, drinking and spending their time there, on the Lord's Day, or on the evening preceding the same, shall be punished by a fine of not more than five dollars for each offence (*Ibid.*, § 7).

**Innholders
not to enter-
tain persons
on Sunday,
or Saturday
evening, ex-
cept.**

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§ 18.

Lien of boarding- and lodging-house keepers.

Boarding- or lodging-house keepers shall have a lien on the baggage and effects brought to their houses and belonging to their guests, boarders or lodgers, except mariners, for all proper charges due for fare and board or lodging, which may be enforced as provided in the five preceding sections (*Ibid.*, chap. 198, § 28).²

§ 19.

Admission of children to theatres, regulated.

Whoever, himself or by his servant or agent, admits a child under the age of thirteen years to any licensed public show or place of amusement, unless said child is accompanied by a person over the age of twenty-one years, shall, on complaint of a parent or guardian of said child or of the chief of police or a truant officer of the city or town in which said child is so admitted, be punished by a fine of not more than one hundred dollars; but the provisions of this section shall not apply to shows and amusements which take place before sunset (*Ibid.*, chap. 102, § 184).

§ 20.

Any officer or person having any duty in any way connected with the inspections of theatres, etc., provided for by this act, who requests for himself or another, or accepts or uses any ticket or pass or privilege of admission, or admission,

² This lien does not cover goods of a third person brought to the inn by the guest. *Mills v. Shirley*, 110 Mass. 158 (1872). The lien attaches when the board is furnished, though the account is not yet payable. *Smith v. Colcord*, 115 Mass. 70 (1874).

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to any theatre or public hall, for which he is to pay or has paid either nothing or a price less than that demanded of the public generally, and any owner, proprietor, manager, lessee, agent or employee of any theatre or public hall, or any other person who issues, delivers, offers or allows any such ticket, pass, privilege or admission to any such officer or person or to any other person at the request, solicitation, procurement, or with the connivance of any such officer or person, shall be punished by a fine or not less than one hundred nor more than one thousand dollars (Acts of 1904, chap. 450, § 14).

Penalty on officers, etc., for accepting, and on proprietors, etc., for issuing free passes, etc.

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XX.

MICHIGAN.

COMPILED LAWS OF 1897.

§ 1.

**Liability of
hotel and inn-
keepers.**

**Proviso as to
amount.**

**Further pro-
viso.**

**Proviso,
agreement
to be in
writing.**

The liability of the keeper of any inn, whether individual, partnership or corporation, for loss of or injury to personal property of his guest, shall be that of a depository for hire: *Provided, however,* That in no case shall such liability exceed the sum of two hundred fifty dollars; and in case of the loss of a trunk or chest, and its contents, it shall not exceed the sum of one hundred fifty dollars; in case of the loss of a valise, portmanteau, grip, telescope or dress-suit case, and contents, it shall not exceed the sum of fifty dollars; and in case of the loss of a box, bundle or package, and contents, it shall not exceed the sum of ten dollars: *And provided further,* That nothing in this act shall prohibit an innkeeper from assuming a greater liability than the sum of two hundred fifty dollars for the personal effects of his guest: *Provided,* said undertaking and agreement shall be in writing, stating the kind of personal property received and the value thereof, the kind and extent of the liability of said innkeeper, which said agreement shall be signed by said guests and said

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innkeeper or his clerk: *And provided further,* **Further proviso.** That nothing contained in this section shall preclude any remedy now existing for the enforcement of the hotel keeper's or innkeeper's lien (Public Acts of 1905, No. 42, § 1).

§ 2.

No innkeeper, whether individual, partnership or corporation, who constantly has in his inn a metal safe or suitable vault in good order, and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping rooms used by his guests suitable locks and bolts, and on the transoms and windows of said rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly and conspicuously suspended in the office and in the ladies' parlor or sitting room, barroom, wash room and in five other conspicuous places in said inn, or in not less than ten conspicuous places in all in said inn, shall be liable for the loss of or injury to any such property belonging to any guest, unless such guest has offered to deliver the same to such innkeeper for custody in such metal safe or vault, and such innkeeper has refused or omitted to take it and deposit it in such safe or vault for custody, and to give such guest a receipt therefor: *Provided, however,* That the keeper of any inn shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of two hundred

When innkeeper not liable for loss of property.

Proviso, as to acceptance of property beyond certain value.

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fifty dollars, except under special agreement as hereinbefore provided, and shall not be liable for any excess of such property whether received or not, but every innkeeper shall be liable for any loss of the above enumerated articles of a guest in his inn, caused by the theft or negligence of the innkeeper or any of his servants (*Ibid.*, § 2).¹

§ 3

Hotel keepers, etc., may detain baggage for payment of board.

The People of the State of Michigan enact, That whenever the keeper of any hotel or inn or boarding or lodging house shall receive into his hotel or inn or boarding or lodging house any person as a guest or boarder or lodger, he shall have a lien upon and right to detain the baggage and effects of such guest or boarder or lodger to secure and compel payment of his customary charges for the food and lodging furnished such guest or boarder or lodger, and such lien may be enforced in the manner hereinafter prescribed (Comp. Laws, § 5317).

§ 4.

When property may be sold.

Any hotel keeper or innkeeper or boarding- or lodging-house keeper who shall have a lien for fare, accommodations or board upon any goods, baggage or other property, and in his possession for three months at least after the departure of the boarder or lodger or guest leaving the

¹ The innkeeper cannot be expected to have a safe large enough to keep merchandise. In order to avail himself of this statute as a defense to an action for the loss of a guest's goods, he must show that he has literally complied with it. *Myers v. Cottrill*, Fed. Cas. No. 9,985, 5 Biss. 465 (1873).

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same, or who for a period of six months shall have in his custody any unclaimed trunk, box, valise, package, parcel or other chattel property whatever, may proceed to sell the same at public auction after first having given notice to the county treasurer of such intended sale, and out of the proceeds of such sale may, in case of lien, retain the amount thereof and the expense of advertisement and sale, and in case of unclaimed property the expense of storage, advertisement and sale thereof: Provided, In all instances, the notice specified in the next section be first given as therein directed (*Ibid.*, § 5318).

Notice of intended sale to be given county treasurer.

Proviso as to notice.

§ 5.

Fifteen days, at least, prior to the time of the sale, a notice of the time and place of holding the sale and containing a brief description of the baggage and articles to be sold shall be published in a newspaper of general circulation, published in the city or town in which such hotel, inn or boarding or lodging house is situated; but if there be none, then in such newspaper published nearest said city or town; and shall also be served upon said guest, boarder, lodger or owner of such chattel articles or property, if he resides or can be found within the county where said hotel, inn, boarding house or lodging house is situated, by delivering the same to him personally or leaving it at his place of residence with a person of suitable age in charge thereof. But if such guest, boarder, lodger or owner does not reside or cannot be found in said county, the said notice shall be deposited

To be published in newspaper.

To be served on owner.

APPENDIX.

Or mailed. in the post office of said city or town with the postage prepaid thereon, fifteen days prior to said sale, and addressed to said guest, boarder, lodger, or owner at his place of residence, if his address be known to said hotel, inn, boarding- or lodging-house keeper. The sale shall take place between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, and all articles sold shall be to the highest bidder for cash (*Ibid.*, § 5319).

Sale, how conducted.

§ 6.

Balance of proceeds. Such hotel keeper, innkeeper, boarding- or lodging-house keeper shall make an entry of the articles sold and the balance of the proceeds of the sale, if any, and within ten days from such sale, shall, upon demand, refund such balance and surplus to such guest, boarder or person leaving the articles sold (*Ibid.*, § 5320).

§ 7.

When to be paid to county treasurer. In case such balance shall not be demanded and paid as specified in the last section within said ten days, then within five days thereafter said hotel keeper, boarding or lodging-house keeper, shall pay said balance to the treasurer of the county in which such hotel, inn, boarding or lodging house shall be situated, and shall at the same time file with said treasurer an affidavit made by him, in which shall be stated the name and place of residence, so far as they are known to him, of the guest, boarder or person, whose goods, baggage or chattel articles were sold, the name and residence of the auctioneer making the sale, and a copy of the no-

Affidavit to be filed.

APPENDIX.

tice published and how served, whether by personal service or by mailing, and if not so served and the reason thereof (*Ibid.*, § 5321.)

§ 8.

Said treasurer shall keep surplus and moneys for, and credit the same to the person named in said affidavit as said guest, boarder, or person leaving the articles sold, and shall pay the same to said person, his or her agent or attorney, executors or administrators, upon demand and evidence satisfactory to said treasurer furnished of their identity: Provided, That if said amount be not claimed within two years from the date of sale, it shall be placed in and become a part of the contingent fund of the county (*Ibid.*, § 5322).

Treasurer to pay to person named, any surplus.

Proviso as to uncalled for claim.

§ 9.

Nothing herein contained shall preclude any other remedy now existing for the enforcement of hotel keeper's, innkeeper's or boarding or lodging-house keeper's lien, nor bar their right to recover for so much of the debt as shall not be paid through said sale (*Ibid.*, § 5323).

Not bar other rights.

§ 10.

The People of the State of Michigan enact, That any person who shall put up at any hotel or inn as a guest and shall procure any food, entertainment or accommodation without paying therefor, except when credit is given therefor by express agreement, with intent to defraud such keeper thereof out of the pay for the same, or who, with intent to defraud such keeper out

Persons attempting to defraud hotel keepers, etc., guilty of misdemeanor.

APPENDIX.

- Penalty.** of the pay therefor, shall obtain credit at any hotel or inn for such food, entertainment or accommodation, by means of any false show of baggage or effects brought thereto, shall, upon conviction thereof, upon the complaint of such hotel keeper before a justice of the peace, be adjudged guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both fine and imprisonment in the discretion of the justice: Provided, That the (provision) provisions of this act shall not apply to boarders at any hotel or inn by the week or month (*Ibid.*, § 11615).
- Proviso.**

§ 11.

- Prima facie proof of fraud.** Proof that lodging, food or other accommodation was obtained by false pretence, or by false or fictitious show or pretence of baggage, or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he absconded or left the premises without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his baggage shall be *prima facie* proof of the fraudulent intent mentioned in section one of this act (*Ibid.*, § 11616).

§ 12.

- Theatres, concert halls, etc., marking of seats in, regulated.** The People of the State of Michigan enact, That it shall not be lawful for the proprietor, lessee or manager of any theatre, concert or lecture hall, or other place of public entertainment, to mark, or cause to be marked, any seat,

APPENDIX.

or seats in any theatre, concert, or lecture hall, or other place of public entertainment, as sold, reserved or taken, unless the seat or seats so marked or designated shall have been actually sold as reserved, at least one hour prior to the time of beginning each performance, or entertainment, in said theatre, concert, or lecture hall, or place of public entertainment, and the purchase of reserved seats for the purpose of selling them is hereby prohibited (*Ibid.*, § 5466).

§ 13.

Any proprietor, lessee, or manager, or other person, who shall violate the provisions of the preceding section, shall on conviction thereof, be fined not less than one dollar, and not more than five dollars, for every seat so marked, designated or purchased (*Ibid.*, § 5467).

Penalty.

§14.

That all persons within the jurisdiction of said State shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, eating houses, barber shops, public conveyances on land and water, theatres, and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens (*Ibid.*, § 11759).

Equal accommodations for all persons.

§ 15.

That any person who shall violate any of the provisions of the foregoing section, by denying to any citizen, except for reasons applicable alike to all citizens of every race and color, and

Penalty for violation of this act.

APPENDIX.

regardless of color or race, the full accommodations, advantages, facilities, or privileges in said section enumerated or by aiding or inciting such denial, shall for every such offence be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not to exceed one hundred dollars, or shall be imprisoned not more than thirty days, or both (*Ibid.*, § 11760).

APPENDIX.

XXI.

MINNESOTA.

STATUTES OF 1894.

§ 1.

Hereafter every landlord or keeper of a public inn or hotel, or boarding-house keeper, in this State, who shall constantly have in his inn or hotel an iron safe in good and suitable order for the safe custody of money, jewelry or other valuable articles belonging to his guests or customers, shall keep posted conspicuously at the office, also on the inside of every entrance door of every public sleeping, reading, bar, sitting and parlor room of such hotel, etc., notice to the guests and customers that they must leave their money, jewelry, and other valuables with the landlord, his agent or clerk, for safe keeping, and he or they may make safe deposits of the same in the place provided for that purpose. Every landlord or keeper of a public inn or hotel shall provide locks and bolts for all room doors (Stat., § 7997; See Rev. Laws of 1905, § 2810).

**S a f e s ; n o -
t i c e s ; l o c k s .**

§ 2.

Such landlord, hotel, or innkeeper as shall comply with the requirements of the first section of this act, shall not be liable for any

APPENDIX.

Exemption from liability.

money, jewelry, or other valuables of gold, silver, or rare and precious stones, that may be lost, if the same is not delivered to said landlord, hotel, or innkeeper, his agent or clerk, for deposit, unless such loss shall occur by the hand, or through the negligence, of the landlord, or by a clerk or a servant employed by him in such hotel, inn, etc. (*Ibid.* § 7998; Rev. Laws, § 2810).¹

§ 3.

Defrauding innkeepers.

A person who obtains any food or accommodation at any inn, hotel, lodging house or boarding house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at any inn, hotel, lodging house or boarding house, by or through any false pretence, or who after obtaining credit and accommodation at an inn, hotel, lodging house or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food and accommodation is guilty of a misdemeanor, and the proprietor or manager of any such inn, hotel, boarding or lodging house, shall have a lien on any baggage or effects of

¹To enable an innkeeper to limit his liability as to property of a guest by keeping an iron safe and posting notices, a notice at the head of the register in which the guest signed his name is not available if the guest's attention was not called to it, so that he might be presumed to have understood and assented to it. *Olson v. Crossman*, 31 Minn. 222, 17 N. W. 375 (1883).

Where there is no clear proof that defendant innkeeper posted the notice required by statute, that valuables must be left with him for safe-keeping, and there is no proof of actual notice, the entire question is properly left to the jury. *Chamberlain v. West*, 37 Minn. 54, 33 N. W. 114 (1887).

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any such person in his possession for the amount due and unpaid for food or lodging so fraudulently obtained (*Ibid.*, § 7999, amended by Laws of 1905, chap. 325; Rev. Laws, § 5164).²

§ 4.

All goods or property taken by any hotel, inn or boarding-house keeper, and by him held for non-payment of any bill for board, lodging or accommodation, may be sold after the expiration of ninety days and default being made in the payment of such bill, upon a notice of ten days, at public auction, upon notice as in cases of constable's sales (*Ibid.*, § 8001; Rev. Laws, § 2811).

Goods taken for board may be sold.

§ 5.

That a person who excludes any other person within the jurisdiction of the State of Minnesota, on account of race, color or previous condition of servitude, from the full and equal enjoyment of any accommodation, advantage, facility or privilege, furnished by innkeepers, hotel keepers, managers or lessees, common carriers, or by owners, managers or lessees of theatres or other places of amusement, or public conveyance on land or water, restaurants, barber shops, eating houses, or other places of public resort, refreshment, accommodation or entertainment, or denies, or aids or incites another to deny to any other person because of race, creed or color, or

Exclusion from public places on account of race, color, etc.

² Under this section the complaint need not allege either the board obtained or the baggage removed to be of any value. *State v. Benson*, 28 Minn. 424, 10 N. W. 471 (1881).

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previous condition of servitude, the full and equal enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, eating house, soda fountain, ice cream parlor, public conveyance on land or water, theatre, barber shop or other place of public refreshment, amusement, instruction, accommodation or entertainment, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five (25) dollars, nor more than one hundred (100) dollars, or imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days. And in addition to the punishment prescribed herein he is liable in damages, in a sum not less than twenty-five (25) nor more than five hundred (500) dollars to the party aggrieved, to be recovered in a civil action (*Ibid.*, §§ 8002, 8003, as amended by Laws of 1897, chap. 349; Rev. Laws, § 2812).

§ 6.

Consignee to keep record of personal property.

Whenever any personal property is consigned to, or deposited with, any forwarding merchant, wharf-keeper, warehouse-keeper, tavern-keeper, express company, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered, in a book kept by him, a description of such property, with the date of the reception thereof (*Ibid.*, § 2090; Rev. Laws, § 2797).

§ 7.

If such property is not left with such consignee or bailee for the purpose of being for-

APPENDIX.

warded or disposed of according to directions received by such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property are known to the consignee or bailee, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property (*Ibid.*, § 2091; Rev. Laws, § 2797).

To notify owner, when.

§ 8.

If any such property is not claimed and taken away within one year after the time it is so received, the consignee or bailee may at any time thereafter proceed to sell the same in the manner provided in this chapter (*Ibid.*, § 2092; Rev. Laws, § 2798).

Property may be sold, when.

§ 9.

Before any such property is sold, if the name and residence of the owner thereof are known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner are unknown, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there is one, printed and published in the same county; if there is no such newspaper, then said notice shall be published in a newspaper printed and published at the capital of the State; the last publication of such notice shall be at least eighteen days previous

Notice of sale, how given.

APPENDIX.

to the time of sale (*Ibid.*, § 2093; Rev. Laws, § 2798).

§ 10.

Affidavit to be made and delivered to justice.

If the owner or person entitled to such property does not take the same away, and pay the charges thereon, after sixty days' notice have been given, the consignee or bailee, his agent or attorney, shall make and deliver to a justice of the peace of the same county an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown (*Ibid.*, § 2099; Rev. Laws, § 2799).

§ 11.

Justice to make inventory.

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described shall be sold by any constable of the county, at public auction (*Ibid.*, § 2095; Rev. Laws, § 2800).

§ 12.

Constable to give notice of sale.

The constable receiving such inventory and order shall give ten days' notice of the sale, by posting up written notices thereof in three or more places in such county, and shall sell such property at public auction to the highest bidder, in the same manner as provided by law for sale under executions from justices' courts (*Ibid.*, § 2096; Rev. Laws, § 2801).

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§ 13.

Upon completing the sale, the constable shall endorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of the sale after deducting his fees (*Ibid.*, § 2097; Rev. Laws, § 2801).

To make return to justice.

§ 14.

From the proceeds of such sale, the justice shall pay all legal charges incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale are not sufficient to pay all the charges, and the balance, if any, he shall immediately pay over to the treasurer of the county in which the same is sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person (*Ibid.*, § 2098; Rev. Laws, § 2802).

Proceeds of sale, how disposed of.

§ 15.

The county treasurer shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the justice (*Ibid.*, § 2099; Rev. Laws, § 2802).

Duty of county treasurer.

§ 16.

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money is deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he shall receive from such treasurer the

Money deposited to be delivered to owner.

APPENDIX.

amount so deposited with him (*Ibid.*, § 2100; Rev. Laws, § 2803).

§ 17.

Unclaimed money to belong to county.

If the amount so deposited with any county treasurer is not claimed by the owner thereof or his legal representatives within the said five years, the same shall belong to the county, and may be disposed of as the board of county commissioners direct (*Ibid.*, § 2101; Rev. Laws, § 2803).

§ 18.

Perishable property, how sold.

Property of a perishable kind and subject to decay by keeping, consigned or left in the manner before mentioned, if not taken away within thirty days after it is left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied, in the manner before provided in this chapter: provided, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof as provided in section twenty of this chapter (*Ibid.*, § 2102; Rev. Laws, § 2798).

§ 19.

Fees of justice and constable.

The fees allowed to any justice of the peace under the provisions of this chapter shall be one dollar for each day's service, and to any constable the same fees as are allowed by law for sale upon an execution, and ten cents per folio for making an inventory of property (*Ibid.*, § 2103; Rev. Laws, § 2804).

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XXII.

MISSISSIPPI.

ANNOTATED CODE OF 1902.

§ 1.

Keepers of hotels, boarding houses and restaurants shall have a lien on the goods and personal baggage of their guests and boarders to secure the payment of any money due from them for board and lodging; and may enforce the same by a seizure and sale of such goods and baggage in the manner provided by law for enforcing liens for purchase money of goods (Code, § 2697). **Lien.**

§ 2.

Any seller of personal property or his assigns, who shall be about to begin suit for the purchase money thereof, may file with his declaration or evidence of debt an affidavit designating the property sought to be subjected and averring therein the liability of the property, in whole or part, for the debt sued on; whereupon the clerk of the court, or justice of the peace in cases before him, shall issue a writ of summons and seizure, commanding the officer to seize the property and deal with it as in the case of an attachment for debt, and to summon **Enforcement of lien.**

APPENDIX.

the defendant as in other cases. The defendant may replevy the property as in case of attachment against debtors (*Ibid.*, § 2720).

§ 3.

Trial and judgment.

If, upon the trial, it be found that the plaintiff is entitled to recover and to subject the property to the payment of his debt, judgment shall be rendered against the defendant for the debt and costs and also for the condemnation and sale of the property for the payment of the same, or such part thereof as it may be found liable for; and if the defendant have given bond for the property, and the judgment and costs be less than the assessed value thereof, judgment shall be rendered against the defendant and the sureties on his bond for the debt and costs; but if the judgment be greater than the value of the property, the judgment shall be for the redelivery to the officer of the property, or, in default thereof, for its assessed value and costs. If the plaintiff prove his debt, but fail to establish the lien on the property, he shall have judgment only for the debt, and shall pay all costs incident to the seizure of the property (*Ibid.*, § 2721).

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XXIII.

MISSOURI.

REVISED STATUTES OF 1899.

§ 1.

Hotel, inn and boarding-house keepers shall **Lien.** have a lien upon the baggage and other valuables of their guests or boarders brought into such hotel, inn or boarding house by such guests or boarders, and upon the wages of such guests or boarders, for their proper charges due from such guests or boarders for their accommodation, boarding and lodging, and such extras as are furnished at their request (Rev. Stat., § 4237).¹

§ 2.

Hotel, inn and boarding-house keepers may sell for cash the baggage and other valuables of their guests or boarders, upon which they may have a lien for charges as provided in the preceding section, or which may be left with them unclaimed, after having retained posses- **Unclaimed baggage may be sold, notice, etc.**

¹ Goods of a third party brought to the inn by a guest are exempt from lien under this section. *Wyckoff v. Southern Hotel Co.*, 24 Mo. App. 382 (1887). This lien may now be enforced by garnishment of guest's wages. *Clark v. Haydock*, 44 Mo. App. 367 (1891). Wages for the last thirty days' services are exempt. *Hodo v. Benecke*, 11 Mo. App. 393 (1882).

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sion of the same for the period of not less than six months, first giving five days' notice of such sale, stating the time, place and terms of sale, by advertisement in a newspaper published in the city or county where said sale is to take place, and if no daily paper is published therein, then by one week's notice in a weekly paper published therein, or by printed or written handbills put up at five places in such city or county aforesaid; and any sums of money received from the proceeds of such sale, after paying all charges, and the expense of sale and of storing the articles (which said expense of storage shall be fifty cents for each parcel), shall be paid into the county treasury, and in the city of St. Louis into the city treasury, for the benefit of the owner, if he shall thereafter appear; but if such money be not claimed within one year, it shall go into the school fund of the county or city: *Provided*, that when such lien is claimed upon the wages of any such guest or boarder, the justice shall notify the party designated by the plaintiff as owing such guest or boarder, that suit has been instituted to enforce such lien, and such notice shall be served in the same manner and have the same force and effect as garnishments in attachments, and the party so served shall be required to answer, and shall receive the same fees as provided in section 3456, Revised Statutes, "of garnishments." (*Ibid.*, § 4238).²

² A judgment for the debt is a prerequisite to enforcing the lien by this process. *Coates v. Acheson*, 23 Mo. App. 255 (1886). And though in the suit a case is not made out for enforcing the lien, a judgment may be given for the amount of debt proved. *Hodo v. Benecke*, 11 Mo. App. 393 (1882).

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§ 3.

No innkeeper in this State, who shall constantly have in his inn an iron safe, in good order, and suitable for the safe custody of money, jewelry and articles of gold and silver manufacture, and of the like, and who shall keep a copy of sections 7578 and 7579 printed by itself in large, plain, English type, and framed, constantly and conspicuously suspended in the office, barroom, saloon, reading, sitting and parlor room of his inn, and also a copy printed by itself, in ordinary sized plain English type, posted upon the inside of the entrance door of every public sleeping room of his inn, shall be liable for the loss of any such articles aforesaid, suffered by any guest, unless such guest shall have first offered to deliver such property lost by him to such innkeeper, for custody in such iron safe, and such innkeeper shall have refused or omitted to take it and deposit it in such safe for its custody and to give such guest a receipt therefor (*Ibid.*, § 7578).³

**Innkeepers,
when not li-
able for losses
of money, etc.**

§ 4.

No innkeeper in this State shall be liable for the loss of any baggage or other property of a guest, caused by fire not intentionally produced

**Liability for
baggage.**

³ This provision was not complied with where the copy of the statute posted was printed in very small type. *Porter v. Gilkey*, 57 Mo. 235 (1874).

Where a copy of the statute has not been posted in the bedroom it is no defence to the innkeeper in a suit by a guest for the loss of the property that the guest had read a copy of the statute on the register. The statute is to be construed strictly, and there is no provision by virtue of which actual notice may take the place of posting. *Batterson v. Vogel*, 8 Mo. App. 24 (1879).

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**For merchan-
dise.**

by the innkeeper or his servants, nor shall he be liable for the loss of any merchandise for sale or sample belonging to a guest, unless the guest shall have given written notice of having such merchandise for sale or sample in his possession after entering the inn, nor shall the innkeeper be compelled to receive such guest with merchandise for sale or sample; but innkeepers shall be liable for the losses of their guests, caused by the theft of such innkeeper or his servants, anything herein to the contrary notwithstanding.⁴

§ 5.

**Obtaining
board, etc.,
by false pre-
tences.**

Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representation, or statement or pretence, and shall fail or refuse to pay therefor, shall be held to have obtained the same with the intent to cheat and defraud such hotel or boarding-house keeper, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail or city workhouse not exceeding six months, or by both fine and imprisonment (*Ibid.*, § 7580).⁵

⁴ Under this section an innkeeper is not responsible for the goods of a travelling salesman stolen from the inn, unless it be shown that the loss was occasioned by the theft or negligence of the innkeeper or his servants, if no written notice of the character of such goods was given him as required, although he knew that the guest had such goods for sale in his room. *Fisher v. Kelsey*, 121 U. S. 383, 30 L. Ed. 930, 7 Sup. Ct. 929 (1887).

⁵ This statute is constitutional. *State v. Kingsley*, 108 Mo. 135, 18 S. W. 994 (1891).

For a proper conviction under the statute relating to false pretences, the defendant must have obtained board

APPENDIX.

§ 6.

It shall be the duty of every hotel and boarding-house keeper in this State to post a printed copy of sections 7580 and 7581 in a conspicuous place in each room of his or her boarding house, and no conviction shall be had under the foregoing section until it shall be made to appear to the satisfaction of the court that the provisions of this section have been substantially complied with by the hotel or boarding-house keeper making the complaint (*Ibid.*, § 7581).

Copy of sections to be posted.

by means of false pretences, and the party defrauded must have permitted him to obtain it on the faith of, and in reliance upon, the truth of the false statement; and where the evidence shows that about the time defendant was to leave he made the false promise, substantially all the board having already been obtained, it fails to make out a case. *State v. Tull*, 42 Mo. App. 324 (1890).

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XXIV.

MONTANA.

ANNOTATED CODES OF 1895.

§ 1.

**Duty to re-
ceive guests.**

Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and entertain any passenger, is guilty of a misdemeanor (Penal Code, § 655).

§ 2.

**Innkeeper's
liability.**

An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn (Civil Code, § 2500).

§ 3.

**How exempt-
ed from lia-
bility.**

If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money,

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jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of, or injury to, such articles, if not deposited with him, and not required by the guest for present use (*Ibid.*, § 2501).

§ 4.

Hotel men, boarding-house and lodging-house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging house by such guests, or boarders, or lodgers, for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid (*Ibid.*, § 2502).

Lien of boarding and lodging-house keepers.

§ 5.

Whenever any trunk, carpetbag, valise, box, bundle or other baggage, has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale, may retain the charges for storage, if any, and the expense of advertising and sale thereof; but no such sale shall be made until the expi-

Sale of baggage by boarding and lodging-house keepers.

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ration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of said keeper and time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county (*Ibid.*, § 2503).

§ 6.

How exempted from liability.

Whenever the proprietor or proprietors of any hotel or inn shall provide a safe or other secure place of deposit therein for the safe-keeping of any money, jewels, ornaments or other articles of value, belonging to any guest or guests of such hotel or inn, and shall cause to be posted and maintained printed notices thereof in the office or public room, and within every guest's

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room of such inn or hotel, the proprietor or proprietors thereof shall not be liable to any such guest or guests who shall neglect to deliver their money, jewels, ornaments, or other articles of value to the proprietor or other person in charge of such safe or place of deposit for deposit and safe-keeping therein for any loss of such money or other articles which may be sustained by such guest by theft or otherwise (*Ibid.*, § 2504).

§ 7.

No innkeeper shall be liable for the loss or destruction by fire of the property received by him from a guest, stored or being, with the knowledge of such, in a barn or other out-building, where it shall appear that such loss or destruction is the work of an incendiary, and occurred without the fault or negligence of such innkeeper or his servants (*Ibid.*, § 2508).

Limitation of innkeeper's liability.

§ 8.

All inn or hotel keepers contemplated in this act, shall be liable for the loss of, or damage to, any baggage or other property of the guests of any hotel or inn by fire, in every case where such is the result of the negligence of the keeper, or his servants (*Ibid.*, § 2509).

Liable for negligence.

§ 9.

No hotel or innkeeper shall be liable to any guest for the loss of wearing apparel, goods or personal effects where it shall appear that such loss occurred without the fault or negligence of such hotel keeper or his employees (*Ibid.*, § 2510).

Not liable without negligence.

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§ 10.

Lien of inn-keeper.

Every hotel or innkeeper in this State shall have a lien upon the baggage and other valuables and personal property of their guests, brought into such hotel or inn, for the proper charges due from such guests to such hotel or innkeeper, for board, lodging, and such extras as may be furnished to them at their request, and such hotel or innkeeper shall be entitled to hold and maintain possession of such baggage and personal property until such sums so due from such guests shall have been fully paid, and the right to such possession shall be maintained against such guest, his heir, his executors, administrators, creditors or assigns (*Ibid.*, § 2511).

§ 11.

Enforcement of lien.

Any hotel or innkeeper who shall have a lien upon any of the goods, baggage or other chattel property of his guests may, at the expiration of six months from the date of the departure of such guest from such hotel or inn, sell and dispose of the same at public auction and to the highest bidder for cash, or so much thereof as may be necessary to pay the sum due such hotel or innkeeper, together with the cost of storage, advertisement and sale (*Ibid.*, § 2512).

§ 12.

Notice of sale.

Before proceeding to the sale of the property of any guest, as provided in § 2512 of this act, such hotel or innkeeper shall cause a notice of such sale, containing a description of the property to be sold, and the time and place where such property will be sold, to be published once

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each week for two successive weeks in a newspaper published in the city or town in which such hotel or inn is situated; but if there be none, then in some newspaper published nearest such town or city, and in case any balance arising from such sale shall not be claimed by the rightful owner within thirty days from the day of such sale, the same shall be paid into the treasury of the county in which such sale took place; and if such balance be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the school fund of such county (*Ibid.*, § 2513).

§ 13.

Any person who shall put up at any inn or hotel, and who shall (except where credit is given by express agreement) procure any food, entertainment, or accommodation without paying therefor, and with intent to cheat and defraud the owner or keeper thereof out of his pay for the same, or who, with intent to cheat and defraud such owner or keeper out of the pay thereof, shall obtain credit at any hotel or inn for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto, or shall with such intent remove, or cause to be removed, any baggage or effects from any hotel or inn, where there is a lien existing thereon for the proper charges due from such guest for fare and board furnished therein, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding three

**Defrauding
innkeeper,
penalty.**

APPENDIX.

months, or by a fine not exceeding one hundred dollars, and costs, or both such fine and imprisonment (*Ibid.*, § 2514).

§ 14.

Unlawful to compel employee to board at company boarding house.

It shall be unlawful for any person, firm, company or corporation now operating, or who shall hereafter operate a boarding house in connection with their general business, either directly or through others, to compel an employee to board in such boarding house against his will (Laws of 1903, chap. 102, § 1).

§ 15.

Penalty.

Any person, firm, company or corporation violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (*Ibid.*, § 2).

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XXV.

NEBRASKA.

COMPILED STATUTES OF 1899.

§ 1.

That hereafter every landlord or keeper of a public inn or hotel in this State, who shall constantly have in his inn or hotel an iron safe in good order, and suitable for the safe custody of money, jewelry, or other valuable articles belonging to his guests or customers, shall keep posted conspicuously at the office and in other public rooms or halls of his inn or hotel, notices to his guests or customers, that they must leave their money, jewelry, and other valuables with the landlord, his agents or clerk, for the safe-keeping, that he may make safe deposits of the same in the place provided for that purpose (Laws of 1905, chap. 81, § 1).

**Deposit of
valuables.**

§ 2.

That such landlord, hotel or innkeeper as shall comply with the requirements of the first section of this act, shall not be liable for any money, jewelry or other valuables of gold or silver or rare or precious stones that may be lost, if the same is not delivered to said landlord, hotel or innkeeper, his agent or clerk, for

Liability.

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deposit unless such loss shall occur by the hand, or through the negligence of the landlord or by a clerk or servant employed by him in such hotel or inn: Provided, that nothing herein contained shall apply to such amount of money and valuables as is usual, common and prudent for any such guest to retain in his room or about his person (*Ibid.*, § 2).¹

§ 3.

Defrauding innkeeper.

Any person who shall put up at any hotel or inn, restaurant, boarding or lodging house, and shall procure any food, entertainment or accommodation, without paying therefor, except where credit is given by express agreement, with intent to cheat or defraud the owner, or keeper thereof, out of the pay for the same; or who with intent to cheat or defraud such owner, or keeper out of the pay therefor, shall obtain credit at any hotel, inn, restaurant, boarding or lodging house, for such food, entertainment or accommodation, by means of any false show of baggage or effects brought thereto; or who shall with such intent remove, or cause to be removed, any baggage or effects from any hotel, inn, restaurant, boarding or lodging house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding three months, or by a fine not exceeding one hundred dollars (*Ibid.*, § 3).

¹ An innkeeper who does not provide a sufficient safe continues liable as at common law. *Dunbier v. Day*, 12 Neb. 596, 12 N. W. 109, 41 Am. Rep. 772 (1882).

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§ 4.

Whenever any personal property shall be consigned to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof (Comp. Stat., § 5344).

**Description
of property.**

§ 5.

If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or otherwise disposed of, according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner, by letter to be directed to him and deposited in a post office to be transmitted by mail, of the reception of such property (*Ibid.*, § 5345).

Owner.

§ 6.

In case any such property shall remain unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks, in a newspaper published in the same county, if there be one, and if not, then in some paper published at the

**Unclaimed
property sale.**

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seat of government, describing such property, and specifying the time when it was received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided (*Ibid.*, § 5346).

§ 7.

**Proceedings
before jus-
tice.**

In case the owner or person entitled to such property shall not, within three months after the publication of such notice, claim such property and pay the lawful charges thereon, including the expenses of such publication, the person having possession of the property, his agent, or attorney, may make and deliver to any justice of the peace, of the same county, an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown (*Ibid.*, § 5347).

§ 8.

Inventory.

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand that the property therein described be sold by the sheriff of the county where the same shall be, at public auction, upon due notice (*Ibid.*, § 5348).

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§ 9.

It shall be the duty of the sheriff receiving such inventory and order, to give ten days' notice of the sale by posting up written notices thereof in three public places in the county or city, and to sell such property at public auction for the highest price he can obtain therefor (*Ibid.*, § 5349).

Notice.

§ 10.

Upon completing the sale, the sheriff making the same shall endorse upon the order aforesaid a return of his proceedings upon such order, and the proceeds of the sale after deducting his fees, which shall be the same as upon an execution (*Ibid.*, § 5350).

Sheriff's return.

§ 11.

From the proceeds of such sale the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant if there be not sufficient to pay the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to three dollars for each day's services rendered by him in such proceeding (*Ibid.*, § 5351).

Expenses.

§ 12.

Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory, and order of sale and return hereinbefore mentioned, together with a statement of the charges and expenses incurred

Avails—disposition.

APPENDIX.

in respect to such property as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale remaining after payment of such charges, expenses, and fees (*Ibid.*, § 5352).

§ 13.

Duties of treasurer. The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office (*Ibid.*, § 5353).

§ 14.

Money paid to owner. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited in the county treasury, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount deposited with him (*Ibid.*, § 5354).

§ 15.

Money paid to school fund. If the amount so deposited with any county treasurer shall not be paid to such owner, or his legal representatives, within the said five years, such county treasurer shall pay such amount into the school fund of the proper county, to be appropriated for the support of schools (*Ibid.*, § 5355).

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XXVI.

NEVADA.

GENERAL STATUTES OF 1885.

§ 1.

Whenever any person shall leave a hotel or lodging house, indebted to the proprietor or proprietors thereof, and shall remain absent for the period of six months, it shall be lawful for such proprietor or proprietors to sell, or cause to be sold, at public auction, any baggage or property of such person so indebted, or so much thereof as may be necessary to pay such indebtedness, expenses and charges of sale, which may have been left at such hotel or lodging house by such person (Gen. Stat., § 4960).

**Proprietor
may sell bag-
gage.**

§ 2.

All baggage or property, of whatever description, left at a hotel or lodging house for the period of twelve months, may be sold at public auction by the proprietor or proprietors thereof, and the proceeds arising from such sale, after deducting the expenses and charges of sale and storage, shall be paid over to the county treasurer of the county in which such baggage or property is left, to be held by him for the period of six months for the benefit of the owner

**Proceeds, how
disposed of.**

APPENDIX.

thereof, at which time, if the same is not paid to the owner, or some person legally entitled to the same, it shall be transferred to the school fund of the county (*Ibid.*, § 4961).

§ 3.

Sales, how made.

All sales made under the preceding sections of this act shall be made by a licensed auctioneer, or by some constable of the township in which such baggage or property may be left; *Provided*, that no sale shall be valid unless a notice of such sale shall be posted up in three public places in such township for the period of twenty days immediately preceding the day of sale, giving a particular description of the property to be sold, the time and place of such sale, the name of the hotel or lodging house at which such baggage or property may be left, the names of the owner or owners of such baggage or property, when known, and signed by such auctioneer or constable (*Ibid.*, § 4962).

§ 4.

Baggage heretofore left may be sold.

It shall be lawful for the proprietor or proprietors of any hotel or lodging house, at which any baggage or property may have heretofore been left, to cause the same to be sold under the provisions of this act; *provided*, that for the purposes of such sale, such baggage or property shall be considered as left at such hotel or lodging house at the date of the passage of this act (*Ibid.*, § 4963).

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XXVII.

NEW HAMPSHIRE.

PUBLIC STATUTES OF 1901.

§ 1.

No hotel keeper shall be liable for losses sustained by his guest, except for wearing apparel, articles worn or carried upon the person to a reasonable amount, personal baggage, and money necessary for travelling expenses and personal use, unless upon delivery or offer of delivery by such guest of his money, jewelry, or other property to such hotel keeper, his agent or servants, for safe custody: *Provided*, that a copy of this chapter is posted in the office of the hotel, and in the room of the guest (Pub. Stat., chap. 129, § 1).

**Liability of
hotel keeper,
how limited.**

§ 2.

Any person keeping a boarder, not a mariner or seaman, shall have a lien upon the baggage and effects of such boarder brought to his boarding house until all proper charges for the fare and board of such boarder are paid or tendered (*Ibid.*, chap. 141, § 1).¹

**Liens of per-
sons keeping
boarders.**

¹ This lien does not cover a charge for keeping a horse. *Cross v. Wilkins*, 43 N. H. 332 (1861).

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§ 3.

**Lien holder
may sell prop-
erty.**

Any person having a lien on personal property, by pledge or otherwise, where no time is limited for the payment of the debt or redemption of the property, may sell the same or so much thereof as is needful, at auction, notice of the sale being given as herein required, and from the proceeds he may reimburse himself for his debt and the expenses incident to the sale (*Ibid.*, § 3).

§ 4.

**Notice of sale,
how pub-
lished.**

Notice of such sale shall be given by posting notices thereof in two or more public places in the town where the property is situate, fourteen days at least before the sale, and if the value of the property exceeds one hundred dollars, by publishing the notice (*Ibid.*, § 5).

§ 5.

**Notice to gen-
eral owner.**

A notice of the sale shall be served upon the pledgor or general owner, if resident in the county, the same number of days before the sale, stating in writing the time and place of sale, the property to be sold, and the amount of the lien thereon (*Ibid.*, § 6).

§ 6.

**Balance to be
paid.**

The balance of the proceeds of sale, if any, after payment of the amount of the lien or pledge, and the reasonable expenses incident to the sale, shall be paid to the pledgor, general owner, or person entitled thereto, on demand (*Ibid.*, § 7).

APPENDIX.

§ 7.

The holder of the lien shall cause a copy of such notices and an affidavit of service, with an account of the sale and of the fees and charges thereon, to be recorded in the books of the town where the sale takes place. A certified copy of the record may be used in evidence (*Ibid.*, § 8).

**Notices and
account of
sale recorded.**

§ 8.

If any person with intent to cheat or defraud the owner or keeper of a hotel, inn, or boarding house, shall procure therein any food, entertainment, or accommodation without paying for it, or shall obtain credit therefor by a false show of baggage or effects brought thereto, or shall remove or cause to be removed from such hotel, inn, or boarding house any baggage or effects while there is a lien upon it for the proper charges due from him for fare and board furnished to him therein at his request, he shall be fined not exceeding twenty dollars, or be imprisoned not exceeding three months (*Ibid.*, chap. 273, § 7).

**Penalty for
defrauding
keepers of
hotels, inns,
and boarding
houses.**

APPENDIX.

XXVIII.

NEW JERSEY.

GENERAL STATUTES OF 1895.

§ 1.

**Hotel, inn
and boarding-
house keepers
to have a lien
on all baggage
and property
of boarders.**

All hotel, inn, and boarding-house keepers shall have a lien on all baggage and property belonging to boarders and lodgers at said hotel, inn, or boarding house, for the amount of their bill or bills due to the proprietor thereof for the hire of rooms or board in said hotel, inn, or boarding house, and shall have the right, without the process of law, to retain the same until the said amount of indebtedness is discharged, and all parties engaging rooms or board in said hotel, inn, or boarding house may be summarily ejected by the proprietor thereof from said premises, upon the aforesaid proprietor giving to said parties so indebted a written notice of three days of the amount of said indebtedness, and their demand for the same, unless said parties shall have entered into any agreement with said hotel, inn, or boarding-house keepers for the mode and manner of payment for room or board other than those announced by notice in said hotel, inn, or boarding house (Gen. Stats., p. 1967, § 48).¹

¹ A boarding-house keeper has not a lien under this section on the separate property of a married woman board-

APPENDIX.

§ 2.

All baggage and property so held by said hotel, inn and boarding-house keeper shall, after the expiration of six months from the date of such detention, be sold at public auction, upon a notice published for three days in a public newspaper published in the city or town where said hotel, inn, or boarding house shall be kept, and the proceeds thereof shall be applied to the payment of such lien and the expenses of such sale, and the balance, if any remaining, shall be paid over to the owner of such property or his representatives; and if said balance is not claimed by such owners within thirty days, then the said balance to be paid over to the overseer of the poorhouse of said city or town for the support of the poor (*Ibid.*, § 49).

Baggage and property may be sold for payment of bills.

§ 3.

Whenever the proprietor or proprietors of any hotel, inn, or boarding house shall provide a safe in the office of such hotel, inn, or boarding house, or other convenient place, for the safe-keeping of any money, jewels, or ornaments belonging to the guests or boarders thereof, by posting a notice stating the fact that such safe is provided, in which such money, jewels, or ornaments may be deposited, in the room or rooms occupied by such guest or boarder, in a conspicuous manner, and if such guest or boarder shall neglect to deposit such money, ing at the house and living apart from her husband, if the husband has engaged, and by express agreement promised to pay, her board. *Baker v. Stratton*, 52 N. J. Law, 277, 19 Atl. 661 (1890).

Proprietors of hotels, etc., not responsible if money and jewels not deposited in safe.

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jewels, or ornaments in such safe, the proprietor or proprietors of such hotel, inn, or boarding house shall not be liable for any loss of such money, jewels, or ornaments, sustained by such guest or boarder, by theft or otherwise (*Ibid.*, § 50).

§ 4.

**Notice of sale
may be pub-
lished in
newspaper in
county.**

That in cases where no newspapers shall be published in any city, town, or township where any hotel, inn, or boarding house shall be kept, the sale provided for in the second section of the act to which this is a supplement may be made upon a notice published for three days in a public newspaper published in the county where such hotel, inn, or boarding house shall be kept, and circulating in the neighborhood thereof (*Ibid.*, § 51).

§ 5.

**Defrauding
landlord a
misdemeanor.**

Any person who obtains any lodging, food, or accommodation at any restaurant, inn, hotel, boarding house or lodging house without paying therefor, with intent to defraud the proprietor or the manager thereof, or who obtains credit at such restaurant, inn, hotel, boarding house or lodging house by the use of any false pretence, or who, after obtaining credit or accommodations at such restaurant, inn, hotel, boarding or lodging house, absconds or surreptitiously removes his or her baggage therefrom without first paying for his, her or their food, accommodations or lodging, is guilty of a misdemeanor (Laws of 1905, chap. 127, p. 241).

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XXIX.

NEW MEXICO.

COMPILED LAWS OF 1897.

§ 1.

Any person who shall put up at any hotel, and who shall procure any food, entertainment or accommodation without paying therefor and with the intent to cheat or defraud the owner or keeper thereof out of pay for the same, or who with intent to cheat or defraud such owner or keeper out of pay therefor, or shall obtain credit at any hotel or inn for such food, entertainment or accommodation, by means of any false show of baggage or effects brought thereto, or who shall with such intent, remove or cause to be removed any baggage or effects from any hotel, inn, or boarding house, while there is a lien existing thereon for the proper charges due from him or her for fare and board furnished therein, shall be punished by imprisonment not exceeding three months in the county jail, or by fine not exceeding one hundred dollars, or both at the discretion of the court (Comp. Laws, § 1375).

Fraud; on innkeepers; penalty.

§ 2.

It shall be the duty of all innholders to post up a printed copy of this act in a conspicuous

Copy to be posted.

APPENDIX.

place in each room of their hotel or inn (*Ibid.*, § 1376).

§ 3.

Liens; inn-keepers and livery keepers.

Innkeepers and livery-stable keepers, and those who board others for pay, or furnish feed or shelter for the property and stock of others, shall have a lien on the property and stock of such guest or guests, or of those to whom feed or shelter has been furnished while the same is in their possession, and until the same is paid (*Ibid.*, § 2239).

§ 4.

Lien; procedure to enforce.

In order to enforce said lien, those who are entitled to the same, as provided by this act, may, after the debt for which the lien is claimed becomes due and payable, serve the party or parties against whom the lien is sought to be enforced, with a written notice, setting forth the amount of the indebtedness, upon what account or cause the same accrued, and that if the same is not paid within ten days after the service of said notice, the property will be advertised and sold to satisfy said indebtedness (*Ibid.*, § 2240).

§ 5.

Property; advertising and sale.

If default be made in the payment of the debt, after notice, as provided in section two thousand two hundred and forty, then it shall be lawful for the lien claimant or creditor, as herein provided, to advertise and sell such property at public auction to the highest bidder for cash after giving twenty days' notice of such

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sale by at least six handbills posted up in public places in the county in which such sale is to be made; such notices of sale shall set forth the time and place of sale and a description of the property to be sold (*Ibid.*, § 2241).

§ 6.

After sale made as provided in section two thousand two hundred and forty-one, the proceeds of such sale shall be applied to the payment of the costs of advertising and making the sale and the satisfaction of the demand of the lien claimant, and the residue, if any, shall be refunded to the lien debtor: *Provided*, That the lien claimant shall not be precluded from bidding on or purchasing the property of such sale.

Proceeds, how applied; lien claimant may purchase.

§ 7.

Landlords and common carriers may proceed in the enforcement of liens now allowed them by law in the manner prescribed in the three sections preceding (*Ibid.*, § 2243).

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XXX.

NEW YORK.

BIRDSEYE'S REVISED STATUTES, CODES, AND GENERAL LAWS, 1901.

§ 1.

**Liability for
loss by fire.**

No innkeeper shall be liable for the loss or destruction by fire of property received by him from a guest, stored or being with the knowledge of such a guest in a barn or other out-building, where it shall appear that such loss or destruction was the work of an incendiary and occurred without the fault or negligence of such innkeeper (Rev. Stat., etc., p. 1744, § 1).¹

§ 2.

**Value of an-
imal de-
stroyed.**

No animal belonging to a guest and destroyed by fire while on the premises of any innkeeper, shall be deemed of greater value than three hundred dollars, unless an agreement shall be proved between such guest and innkeeper that a higher estimate shall be made of the same (*Ibid.*, § 2).

¹ The negligence intended in the words, "without the fault or negligence of such innkeeper," is that which precedes, induces, or facilitates the fire, and not negligence afterwards. *Faucett v. Nichols*, 4 Thomp. & C. 597 (1874).

The burden is on the innkeeper to show that the loss happened without the fault or negligence of the innkeeper. *Faucett v. Nichols*, 64 N. Y. 377 (1876).

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§ 3.

Whenever the proprietor or manager of any hotel, inn or steamboat shall provide a safe in the office of such hotel or steamboat, or other convenient place for the safe-keeping of any money, jewels or ornaments belonging to the guests of or travellers in such hotel, inn or steamboat, and shall notify the guests or travellers thereof by posting a notice stating the fact that such safe is provided, in which such money, jewels, or ornaments may be deposited, in a public and conspicuous place and manner in the office and public rooms, and in the public parlors of such hotel or inn, or saloon of such steamboat; and if such guest or traveller shall neglect to deliver such money, jewels or ornaments, to the person in charge of such office for deposit in such safe, the proprietor or manager of such hotel or steamboat shall not be liable for any loss of such money, jewels or ornaments, sustained by such guest or traveller by theft or otherwise; but no hotel or steamboat proprietor, manager or lessee shall be obliged to receive property on deposit for safe-keeping exceeding five hundred dollars in value; and if such guest or traveller shall deliver such money, jewels or ornaments to the person in charge of such office, for deposit in such safe, said proprietor, manager or lessee shall not be liable for any loss thereof, sustained by such guest or traveller by theft or otherwise in any sum exceeding the sum of two hundred and fifty dollars unless by special agreement in writing with such proprietor, manager or lessee (*Ibid.*, § 3).²

**Liability for
loss of valu-
ables; de-
posit; safe.**

² This statute, being in derogation of the common law,

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§ 4.

Loss of wear-
ing apparel,
etc.

No hotel keeper shall be liable to any guest for the loss of wearing apparel, goods or merchandise for any sum exceeding the sum of five hundred dollars, where it shall appear that such loss occurred without the fault or negligence of must be strictly construed. *Briggs v. Todd*, 28 N. Y. Misc. 208, 59 N. Y. Supp. 23 (1899).

The statutory exemption does not begin until a reasonable time after the guest's arrival. *Rosenplaenter v. Roessle*, 54 N. Y. 262 (1873). And in spite of the provisions of the statute the innkeeper remains liable for valuables stolen from the trunk of a guest after the guest has packed his trunk, locked his room, given notice of his departure, and delivered the key of his room to the clerk to have his trunk brought down. *Bendetson v. French*, 46 N. Y. 266 (1871).

Money.—All money comes within the provision of this section, even a reasonable amount for travelling expenses; and the guest keeps such money in his own possession at his own risk. *Hyatt v. Taylor*, 42 N. Y. 258 (1869), overruling *Gile v. Libby*, 36 Barb. 70 (1861), and *Krohn v. Sweeney*, 2 Daly, 200 (1867).

Jewels and ornaments.—Silver table forks and a silver soup ladle are not jewels and ornaments. *Briggs v. Todd*, 28 N. Y. Misc. 208, 59 N. Y. Supp. 23 (1899).

Watch.—A watch is not a jewel or ornament, and therefore need not be deposited with the innkeeper under this section in order to hold the innkeeper responsible for it. *Ramaley v. Leland*, 43 N. Y. 539, 3 Am. Rep. 728 (1871); *Gile v. Libby*, 36 Barb. 70 (1861); *Krohn v. Sweeney*, 2 Daly, 200 (1867); *Bernstein v. Sweeny*, 33 N. Y. Super. Ct. 271 (1871); *Becker v. Warner*, 90 Hun, 187, 35 N. Y. Supp. 739 (1895). This is true even though the watch is laid inside the owner's trunk for a short time; it does not therefore become a jewel or ornament. Nor does the fact that a state coat of arms is engraved on the watch, and a picture of the guest's mother is on the inside of the case, convert it into a jewel or an ornament. *Briggs v. Todd*, 28 N. Y. Misc. 208, 59 N. Y. Supp. 23 (1899).

Property not included under the description "money, jewels and ornaments," including all that which is useful or necessary to the comfort and convenience of the guest, that which is usually carried and worn as a part of the

such hotel keeper; nor shall he be liable in any sum for the loss of any article or articles of wearing apparel, cane, umbrella, satchel, valise, box, bag, bundle or other chattel belonging to such guest, and not within a room assigned to him, unless the same shall be specially intrusted to the care and custody of such hotel keeper or his servants (*Ibid.*, § 4).³

ordinary apparel and outfit, or is ordinarily used and is convenient for use by travellers as well in as out of their rooms, is left, as before the statute, at the risk of the innkeeper. Thus a watch is not included. The words of the statute must be taken in their ordinary sense, in the absence of any indication that they were used either in a technical sense or a sense other than that in which they are popularly used. *Ramaley v. Leland*, 43 N. Y. 539, 3 Am. Rep. 728 (1871).

Posting notice. The notice must be posted as called for in the act. If it is not so posted the innkeeper continues liable as at common law. *Lima v. Dwinelle*, 7 Alb. L. J. 44 (1873). Printing it at the head of each page of the register is not enough. *Ramaley v. Leland*, 6 Rob. 358 (1868); *Kellogg v. Sweeney*, 1 Lans. 397 (1869); *Bernstein v. Sweeney*, 33 N. Y. Super. Ct. 271 (1871). If, however, the guest has actual knowledge of the facts contained in the notice, whether by actual information from the innkeeper or by a notice not posted as required by the act, the innkeeper is exempted from liability. *Purvis v. Coleman*, 21 N. Y. 111 (1860). This actual notice must be unmistakably brought home to the guest. *Kellogg v. Sweeney*, 1 Lans. 397 (1869); *Van Wyck v. Howard*, 12 How. Pr. 147 (1856).

Deposit with the innkeeper.—If the guest fails to make the deposit as required by this section the innkeeper is exempt from liability, even if the guest was not negligent. *Rosenplaenter v. Roessle*, 54 N. Y. 262 (1873). If, however deposit is waived by the innkeeper he continues liable. *Friedman v. Breslin*, 169 N. Y. 574, 61 N. E. 1129, affirming *S. C.*, 51 App. Div. 268, 65 N. Y. Supp. 5 (1901.)

Liability for goods deposited. For goods deposited as provided in this section the innkeeper is liable as at common law. *Wilkins v. Earle*, 44 N. Y. 172, 4 Am. Rep. 655 (1870).

³ Where an innkeeper provides a row of hooks behind

APPENDIX.

§ 5.

Registers to be kept by certain hotels, etc.; inspection thereof.

The proprietor or manager of any hotel, tavern, inn, boarding or lodging house shall keep a register which shall show the name, residence, date of arrival and departure of their guests, providing such proprietor or manager shall be under a contract with a corporation, association, partnership or individual by the terms of which such corporation, association, partnership or individual is entitled to receive a percentage of the receipts from such business, which register shall be subject to the inspection of any corporation, association, partnership or individual who shall be under a contract with such proprietor or manager by the terms of which such corporation, association, partnership or individual is entitled to receive a percentage of the receipts from such business (*Ibid.*, § 5).

§ 6.

Innkeepers refusing to receive guest.

A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor (*Ibid.*, § 6).

the office desk upon which guests may hang their coats without checks being given therefor, he thereby assumes a duty to care for the same, and is liable for the loss of a coat hung in such place by a guest, in the presence of an employee of the hotel, notwithstanding the provisions of this section. *Bradner v. Mullen*, 59 N. Y. Supp. 178, 27 N. Y. Misc. 479 (1899).

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§ 7.

A person who obtains any lodging, food or accommodation at an inn, boarding house or lodging house, except an emigrant lodging house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding house or lodging house, by the use of any false pretence, or who, after obtaining credit or accommodation at such an inn, boarding house or lodging house, absconds and surreptitiously removes his baggage therefrom without paying for his food, accommodation or lodging, is guilty of misdemeanor (*Ibid.*, § 7).⁴

Frauds on hotel keepers.

§ 8.

Every hotel, inn or tavern keeper within this State who shall have any unclaimed article, goods, or thing in his possession for a period of one year, at least, whether a receipt or check for the same may, or may not, have been given to the person or persons who left the same, may proceed to sell the same at public auction and out of the proceeds may retain the expenses of advertising and sale thereof; but no such sale shall be made unless, in case the name and residence of the owner shall be known or ascertained, notice of such sale be sent to the owner by mail; nor shall any such sale be made until the expiration of four weeks from the publication of a notice of such sale in a newspaper published at or nearest the place at which such

Sale of unclaimed articles.

⁴ The crime is not committed unless the fraudulent intent exists at the time the board is obtained, and it is obtained by means of the false pretence. *People v. Nicholson*, 25 N. Y. Misc. 266, 55 N. Y. Supp. 447 (1898).

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article, goods or thing was left and where such sale is to take place; and said notice shall contain a description of such article, goods or thing and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such article, goods or thing in a ratable proportion, according to the value of each article, package or parcel, if more than one (*Ibid.*, § 8).

§ 9.

Disposition of proceeds.

Such hotel, inn or tavern keeper shall make an entry of the balance of the proceeds of the sale, if any, of each article, goods or thing left by the same person, as near as the same can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such article, goods or thing, his heirs or assigns, on satisfactory proof of such ownership (*Ibid.*, § 9).

§ 10.

Unclaimed proceeds.

In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified then it shall be paid to the county treasurer for the use of the county poor of said county (*Ibid.*, § 10).

§ 11.

A keeper of a hotel, apartment hotel,⁵ inn, boarding house⁶ or lodging house, except an

⁵ Apartment hotels were not included in the former act. *Shearman v. Iroquois Hotel & A. Co.*, 42 N. Y. Misc. 217, 85 N. Y. Supp. 365 (1903).

⁶ This applies only to houses in which persons are taken to board as a regular business, and not to houses where

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emigrant lodging house, has a lien upon, while **Lien.** in possession, and may detain the baggage and other property brought upon their premises by a guest, boarder or lodger, for the proper charges due from him, on account of his accommodation, board and lodging, and such extras as are furnished at his request. If the keeper of such hotel, apartment hotel, inn, boarding or lodging house knew that the property brought upon his premises was not, when brought, legally in possession of such guest, boarder or lodger, or had notice that such property was not then the property of such guest, boarder or lodger, a lien thereon does not exist. An apartment hotel within the meaning of this section includes a hotel wherein apartments are rented for fixed periods of time, either furnished or unfurnished, to the occupants of which the keeper of such hotel supplies food, if required. A guest of an apartment hotel, within the meaning of this section, includes each and every person who is a member of the family of the tenant of an apartment therein, and for whose support such tenant is legally liable (Laws, 1905, chap. 206).⁷

one or more boarders are kept occasionally only, and on special occasions. *Cady v. McDowell*, 1 Lans. 484 (1869).

⁷ See *Barnett v. Walker*, 39 N. Y. Misc. 323, 79 N. Y. Supp. 859 (1902). This lien cannot be extended to any charge except for board; for instance, to damages for breach of contract to remain as a boarder. *Shafer v. Guest*, 6 Rob. 264, 35 How. Pr. 184 (1868). There is no difference in this respect between transient and permanent boarders. *Stewart v. McCreedy*, 24 How. Pr. 62 (1861).

The lien does not extend to the goods of a third party, brought to the house by the boarder. *Misch v. O'Hara*, 9 Daly, 361 (1880); *Barnett v. Walker*, 39 N. Y. Misc. 323, 79 N. Y. Supp. 859 (1902). See a different inter-

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§ 12.

A lodging house shall be taken to mean and include any house or building, or the portion thereof, in which persons are harbored, or received or lodged for hire for a single night, or less than a week at one time, or any part of which is let to any person to sleep in for any term less than a week (Rev. Stat., p. 446).⁸

§ 13.

**Preservation
of life at bath-
ing places.**

Every keeper or proprietor of a hotel or boarding house, and every other person having for use a bathing house upon any beach or shore of the ocean, for the accommodation of his guests, or of other persons for pay, shall provide for the safety of such bathers two lines of sound, serviceable and strong manilla or hemp rope, not less than one inch in diameter, anchored at some point above high water, at the same distance apart as the line of bathing houses, or space fronting on such beach occupied by him is in width; and from the two points at which such life lines are so anchored, such line shall be made to extend as far into the surf as bathing is ordinarily safe and free from danger of drowning to persons not expert in

pretation given to an earlier statute. *Jones v. Morrill*, 52 Barb. 623 (1864).

So the wife's goods are not held on lien for her own board where the husband is the party responsible for it. *Birney v. Wheaton*, 5 How. Pr. N. S. 519 (1885); *McIlvane v. Hilton*, 7 Hun, 594 (1876).

⁸ For special statutes on boarding houses for seamen and emigrants, as to printed schedule of prices, maximum of lien, requirement of special license, wearing of badges by runners, etc., see Rev. Stat., pp. 1246-1248 (vol. I) and pp. 3210, 3211 (vol. II).

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swimming, and at such points of safety such lines shall be anchored and buoyed. From the two points of such lines so extended, anchored and buoyed, a third line shall be extended, connecting the two extremities, and buoyed at such points as to be principally above the surface of the water, thereby enclosing a space within such lines and the beach within which bathing is believed to be safe. Every such keeper or proprietor or other such person shall cause to be painted and put up in some prominent place upon the beach, near such bathing houses, the following words: "Bathing beyond the lines dangerous." Such lines so placed, anchored and buoyed, and such notice so put up, shall continue and be so maintained by every such keeper, proprietor or other person during the entire season of surf bathing. The owner of a bathing house shall not be subject to the provisions of this section where it is used, occupied or maintained by a lessee for hire, but such lessee shall be deemed the keeper or proprietor thereof. Every person violating any provision of this section shall forfeit to the county where the violation occurs the sum of twenty-five dollars for every such violation, and for each day that any such violation is repeated or continued (R. S., p. 2865, § 212).

§ 14.

That all persons within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating houses, bath houses, barber shops, theatres, music halls,

Equal accommodations.

APPENDIX.

public conveyances on land and water, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens (R. S., p. 3181, § 23).

§ 15.

A person who:

Penalties.

1. Excludes a citizen of this State, by reason of race, color or previous condition of servitude, from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of the common schools and public institutions of learning, or by cemetery associations; or

2. Denies or aids or incites another to deny to any other person because of race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement, is guilty of a misdemeanor, punishable by fine of not less than fifty dollars or more than five hundred dollars (Penal Code, § 383).

XXXI.

NORTH CAROLINA.

§ 1.

Every boarding-house keeper who furnishes board or bed or room to any person shall have the right to retain possession of and a lien upon all baggage or other property of such person that may have been brought to such boarding house until all reasonable charges for such room, bed and board are paid (Laws of 1899, chap. 645, § 1).

**B o a r d i n g -
h o u s e k e e p e r s
s h a l l h a v e
l i e n o n b a g -
g a g e .**

§ 2.

That if such charges are not paid within ten days after they become due then said boarding-house keeper is authorized to sell said baggage or other property at the courthouse door, after first advertising such sale for ten days at said courthouse door, and three (3) other public places in the county, and out of the proceeds of sale to pay the costs and expenses of sale and all costs and charges due for said board, bed or room, and the surplus, if any, pay to the owner of said baggage or other property (*Ibid.*, § 2).

**W h e n c h a r g e s
n o t p a i d p r o p -
e r t y m a y b e
s o l d .**

§ 3.

That written notice of such sale shall be served on the owner of such baggage or other

APPENDIX.

Written notice of sale shall be served on owner of property.

property ten days before such sale, if such owner be a resident of the State, but if such owner be a non-resident of the State, or if his residence be unknown, the publication of such notice ten days at the courthouse door and three (3) other public places in the county shall be sufficient service of the same (*Ibid.*, § 3).

§ 4.

Innkeeper required to provide suitable accommodations for guests.

Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travellers whom he may accept as guests in his inn or hotel (Laws of 1903, chap. 563, § 1).

§ 5.

When innkeeper liable for loss.

Innkeepers shall not be liable for loss, damage or destruction of the baggage or property of their guests except in case such loss, damage or destruction results from the failure of the innkeeper to exercise ordinary, proper and reasonable care in the custody of such baggage and property, and in case of such loss, damage or destruction resulting from the negligence and want of care of the said innkeeper he shall be liable to the owner of the said baggage and property to an amount not exceeding one hundred dollars: *Provided, however*, any guest may at any time before a loss, damage or destruction of his property notify the innkeeper in writing that his property exceeds in value the said sum of one hundred dollars, and shall upon demand of the innkeeper furnish him a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for

Where value of property over \$100.

APPENDIX.

the loss, damage or destruction of said property because of any negligence on his part for the full value of the same: *Provided further*, that proof of the loss of any such baggage, except in case of damage or destruction by fire, shall be *prima facie* evidence of the negligence of said hotel or innkeeper (*Ibid.*, § 2).

Proof of loss prima facie evidence of innkeeper's negligence in case of fire.

§ 6.

It shall be the duty of innkeepers, upon the request of any guest, to receive from said guest and safely keep money, jewelry and valuables to an amount not exceeding five hundred dollars; and no innkeeper shall be required to receive and take care of any money, jewelry or other valuables to a greater amount than five hundred dollars: *Provided*, the receipt given by said innkeeper to said guest shall have plainly printed upon it this section of this act. No innkeeper shall be liable for the loss, damage or destruction of any money or jewels not so deposited (*Ibid.*, § 3).

Safe-keeping of money or valuables on request.

M a x i m u m amount.

Form of receipt.

Innkeeper not liable for loss, etc., when not deposited.

§ 7.

No innkeeper shall be liable for loss, damage or destruction of any baggage or property caused by fire not resulting from the negligence of the innkeeper or by any other force over which the innkeeper had no control: *Provided*, that nothing herein contained shall enlarge the limit of the amount to which the innkeeper shall be liable as provided in the preceding sections of his act (*Ibid.*, § 4).

Loss by fire, not result of negligence, innkeeper not liable.

Proviso as to amount of liability.

APPENDIX.

§ 8.

Printed copy of act and other regulations to be posted in each room.

Failure, not entitled to provisions of act.

Every innkeeper shall keep posted in every room of his house occupied by guests, and in the office, a printed copy of this act and of all regulations relating to the conduct of guests; and in case of failure to do so he shall not be entitled to take advantage of any of the provisions of this act (*Ibid.*, § 5).

§ 9.

Not applicable when innkeeper fails to comply with section 5.

This act shall not apply to innkeepers or their guests when the innkeeper shall not comply with the provisions of section five of this act (*Ibid.*, § 6).

§ 10.

Right of innkeeper to show that loss occurred from negligence of guest, etc.

Any innkeeper against whom claim is made for loss sustained by guests may show that such loss resulted from the negligence of such guests or from his failure to comply with the reasonable and proper regulations of the inn (*Ibid.*, § 7).

APPENDIX.

XXXII.

NORTH DAKOTA.

REVISED CODES OF 1895.

§ 1.

An innkeeper or keeper of a boarding house is liable for all losses or injuries to personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner or by the act of someone whom he brought into the inn or boarding house (Rev. Code, § 4029).

**Innkeeper's
liability.**

§ 2.

If an innkeeper or boarding-house keeper keeps a fireproof safe and gives notice to a guest or boarder, either personally or by putting up a printed notice in a prominent place in the room occupied by the guests or boarders that he keeps such a safe and will not be liable for money, jewelry, documents or other articles of unusual value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto for any loss of or injury to such article, if not deposited with him and not required by the guest or boarder for present use (*Ibid.*, § 4030).

**How ex-
empted from
liability.**

APPENDIX.

§ 3.

Lien of hotel keepers, etc.

Hotel, inn, boarding house and lodging-house keepers shall have a lien upon the baggage and other property of their guests, boarders or lodgers, brought into such hotel, inn, boarding or lodging house by such guests, boarders or lodgers for the proper charges due from such guests, boarders or lodgers for their accommodation, board and lodging and room rent and such extras as are furnished at their request and the right to the possession of such baggage or other property until all such charges are paid (*Ibid.*, § 4841).

§ 4.

When unclaimed property may be sold.

Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company or any other common carrier in the course of his or its business as common carrier shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed and the owner or person to whom the same is consigned cannot be found upon diligent inquiry or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction after giving the owner or consignee fifteen days' notice of the time and place of sale through the post office and by advertising in a newspaper published in the county where such sale

APPENDIX.

is made and out of the proceeds of such sale to pay all legal charges on such article and the amount over, if any, shall be paid to the owner or consignee upon demand (*Ibid.*, § 4195).

§ 5.

Perishable property which has been transported to its destination and the owner or consignee notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may in the exercise of a reasonable discretion sell the same at public or private sale without advertising and the proceeds after deducting the freight and charges and expenses of sale shall be paid to the owner or consignee upon demand (*Ibid.*, § 4196).

When perishable property may be sold.

§ 6.

The provisions of the last two sections shall apply to hotel keepers and warehousemen (*Ibid.*, § 4197).

Applies to hotel keepers.

§ 7.

A person who obtains any food or accommodation at any inn, hotel or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at any inn, hotel or boarding house by use of any false pretence, or who, after obtaining food or accommodations at an inn, hotel or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food and accommodation, is

Fraudulently obtaining food or accommodation at inns.

APPENDIX.

guilty of a misdemeanor, and on conviction thereof shall be fined not more than one hundred dollars, nor less than five dollars, or imprisoned in the county jail for not more than thirty nor less than ten days, or both such fine and imprisonment at the discretion of the judge or justice of the peace before whom the trial is held (*Ibid.*, § 7674).

APPENDIX.

XXXIII.

OHIO.

BATES' ANNOTATED OHIO STATUTES, 1906.

§ 1.

That all persons within the jurisdiction of said State shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, eating houses, barber shops, public conveyances on land or water, theatres and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens (Bates' Stat., § 4426-1). **Civil rights.**

§ 2.

That any person who shall violate any of the provisions of the foregoing section by denying to any citizen, except for reasons applicable alike to all citizens of every race and color, and regardless of color or race, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial shall, for every such offence, forfeit and pay a sum not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars to the person **Penalty.**

APPENDIX.

aggrieved thereby, to be recovered in any court of competent jurisdiction in the county where said offence was committed; and shall also, for every such offence, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars, or shall be imprisoned not less than thirty (30) days nor more than ninety (90) days, or both; and provided further, that a judgment in favor of the party aggrieved, or punishment upon an indictment, shall be a bar to either prosecution respectively (*Ibid.*, § 4426-2).

§ 3.

**Liability for
loss of prop-
erty.**

No innkeeper, whether individual, partnership or corporation, who constantly has in his inn a metal safe or suitable vault in good order, and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers, and bullion, and who keeps on the doors of the sleeping rooms used by his guests suitable locks or bolts, and on the transoms and windows of said rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly and conspicuously suspended in the office and in the ladies' parlor or sitting room, barroom, washroom and in five other conspicuous places in said inn, or in not less than ten conspicuous places in all in said inn, shall be liable for the loss or injury suffered by any guest, unless such guest has offered to deliver the same to such innkeeper for custody, in such

APPENDIX.

metal safe or vault, and such innkeeper has omitted or refused to take it and deposit it in such safe or vault for custody and to give such guest a receipt therefor. Provided, however, that the keeper of any inn shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of five hundred dollars, and shall not be liable for any excess of such property whether received or not; but such innkeeper may by special arrangement with a guest receive for deposit in such safe or vault any property upon such terms as they may agree to in writing, but every innkeeper shall be liable for any loss of the above-enumerated articles of a guest in his inn, caused by the theft or negligence of the innkeeper, or any of his servants (*Ibid.*, § 4427).¹

Special arrangements.

§ 4.

The liability of the keeper of any inn whether individual, partnership, or corporation, for loss of or injury to personal property placed by his guests under his care, other than that described in the preceding section, shall be that of a depositary for hire; provided, however, that in no case, shall such liability exceed the sum of one hundred and fifty dollars for each trunk and its contents, fifty dollars for each valise

Limitation of liability.

¹ Under this section an innkeeper who has complied with the provisions of the statute is not liable to a guest for the loss by theft of jewelry and money which the guest retained in his possession, in the absence of any proof of negligence on the part of the innkeeper or his servants. A watch and money for travelling expenses come within the provisions of the statute. *Lang v. Arcade Hotel Co.*, 9 Ohio Dec. 372, 12 Wkly. Law Bull. 250 (1883).

APPENDIX.

and its contents, and ten dollars for each box, bundle or package, and contents, so placed under his care, unless he shall have consented in writing with such guest to assume a greater liability (*Ibid.*, § 4427a).

§ 5.

Lien.

The keeper of any inn, whether individual, partnership or corporation, shall have a lien on the baggage and other property in and about such inn belonging to or under the control of his guests or boarders for the proper charges due him from such guests or boarders for the accommodation, board and lodging, and for all money paid for or advanced to them, and for such other extras as are furnished at their request, and said innkeeper shall have the right to detain such baggage and other property until the amount of such charges is paid, and such baggage and other property shall not be exempt from attachment or execution until such innkeeper's lien and the cost of satisfying it are satisfied. The innkeeper shall retain such baggage and other property upon which he has a lien for a period of sixty days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage and other property at public auction, after giving ten days' notice of the time and place of sale in a newspaper of general circulation in the county where the inn is situated, and also by mailing a copy of such notice addressed to said guest or boarder at the place of residence registered by him in the register of such inn; and after satisfying the lien and any costs that may accrue, any residue

Sale of property.

APPENDIX.

remaining shall, on demand within six months, be paid to such guest or boarder, and if not so demanded within six months from date of such sale, said residue shall be deposited by such innkeeper with the treasurer of the county in which the inn is situated, together with a statement of the innkeeper's claim, the cost of enforcing same, a copy of the published notice, and of the amounts received for the goods sold at said sale; said residue shall by said county treasurer be credited to the general revenue fund of said county, subject to a right of said guest or boarder, or his representatives, to reclaim the same at any time within three years of the date of deposit with said treasurer (*Ibid.*, § 4427b).

**Disposal of
proceeds.**

§ 6.

Any person who shall obtain food, lodging or other accommodation at any hotel, inn, boarding or eating house with intent to defraud the owner or keeper thereof, shall be fined not exceeding two hundred dollars, or imprisoned in the county jail or city workhouse not exceeding three months, or both (*Ibid.*, § 7076a).

**Defrauding
innkeepers.**

§ 7.

Proof that lodging, food or other accommodation was obtained by false pretence, or by false or fictitious show or pretence of any baggage or other property, or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodation, negotiable paper on which pay-

**Proof of
fraudulent in-
tent; agree-
ment for de-
lay.**

APPENDIX.

ment was refused, or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be *prima facie* proof of the fraudulent intent mentioned in section seven thousand and seventy-six (a); but this act shall not apply where there has been an agreement for delay in payment for a period to exceed ten days (*Ibid.*, § 7076b).

§ 8.

Notice of provisions of this act.

It shall be the duty of every hotel, inn, or boarding-house keeper within this State to keep a copy of section seven hundred (thousand) and seventy-six (b) printed in distinct type posted conspicuously in the office, the ladies' parlor or sitting room, barroom, washroom and in five other conspicuous places in said inn, or in not less than ten conspicuous places in all in said inn (*Ibid.*, § 7076c).

§ 9.

Theatrical exhibitions and tickets.

All municipal corporations shall have the following general powers and council may provide by ordinance or resolution for the exercise and enforcement of the same:

7. To regulate, by license or otherwise, restrain or prohibit theatrical exhibitions and public shows of whatever name or nature, for which money or other reward is demanded or received; to regulate, by license or otherwise, the business of trafficking in theatrical tickets or other tickets of licensed amusements, by parties not acting as agents of those issuing

APPENDIX.

the same, but public school entertainments, lecture courses and lectures on historic, literary or scientific subjects shall not come within the provisions of this section (*Ibid.*, § 1536-100).

APPENDIX.

XXXIV.

OKLAHOMA.

STATUTES OF 1893.

§ 1.

**Liability of
keeper of an
inn or board-
ing house.**

An innkeeper or keeper of a boarding house is liable for all losses of, or injuries to, personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn or boarding house, and upon such property the innkeeper or keeper of a boarding house has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessities by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed for the sale of pledged property (Stat., § 2735).

§ 2.

**How ex-
empted from
liability.**

If any innkeeper or boarding-house keeper keeps a fireproof safe, and gives notice to a guest or boarder either personally or by putting up a printed notice in a prominent place in the room occupied by the guest or boarder, that he keeps such a safe, and will not be liable

APPENDIX.

for money, jewelry, documents or other articles of unusual value and small compass, unless placed therein, he is not liable except so far as his own acts contribute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest or boarder for present use (*Ibid.*, § 2736).

§ 3.

Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, safe-keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service (*Ibid.*, § 3210).

Lien for services rendered.

§ 4.

Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company, or any other common carrier in the course of his or its business as common carrier, shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction,

Sale of unclaimed property may be made, when.

APPENDIX.

after giving the owner or consignee fifteen days' notice of time and place of sale, through the post office and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the amount over, if any, shall be paid to the owner or consignee upon demand (*Ibid.*, § 458).

§ 5.

**Act applies to
hotel keepers.**

The provisions of this act shall apply to hotel keepers and warehousemen (*Ibid.*, § 460).

APPENDIX.

XXXV.

OREGON.

HILL'S ANNOTATED LAWS, 1892.

§ 1.

Hotel keepers, innkeepers, lodging-house keepers, and boarding-house keepers shall have a lien upon the baggage, clothing, jewelry, and other valuables of their guests, lodgers, or boarders brought into such hotel, inn, lodging house, or boarding house by such guest, lodger, or boarder for the reasonable charges due from such guests, lodgers, or boarders for their accommodation, board, or lodging, and such extras as are furnished at the request of such guest, lodger, or boarder; and such hotel keeper, innkeeper, lodging-house keeper, or boarding-house keeper may retain and hold possession of such baggage, clothing, jewelry, and other valuables until such charges be paid (Hill's Annot. Laws, p. 1908, § 1, revised by Laws of 1903).

Lien on baggage.

§ 2.

If such reasonable charges be not paid within sixty days from the time of furnishing such accommodations, board, lodgings, or extras, the person having such lien may proceed to sell such baggage or other valuables at public auc-

Sale.

APPENDIX.

Notice. tion, or a part thereof sufficient to pay such proper charges. Before selling he shall give notice of such sale by advertisement for three weeks in a newspaper published in the county, or by posting up notice of such sale in three of the most public places in the city or precinct for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien and the cost of selling such property, and the remainder, if any, shall be paid over to the owner thereof on demand (*Ibid.*, § 2).

Costs.

§ 3.

Special agreement. The provisions of the proceeding (preceding) sections shall not interfere with any special agreement of the parties (*Ibid.*, § 3).

§ 4.

Consignee or depositary to enter receipt of property in book. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof (*Ibid.*, § 3712).

§ 5.

If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee

APPENDIX.

at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property (*Ibid.*, § 3713).

When bailee to notify owner of receipt of property.

§ 6.

If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same in the manner provided in this title (*Ibid.*, § 3714).

When bailee may sell property.

§ 7.

Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published containing a description of the property for the space of six weeks successively in a newspaper if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the State; the last publication of such notice shall be at least eighteen days previous to the time of sale (*Ibid.*, § 3715).

Notice of sale, when to be given personally to owner.

Notice, when given by publication.

APPENDIX.

§ 8.

**Proceeding
when prop-
erty not
claimed.**

**Affidavit by
bailee.**

If the owner or person entitled to such property shall not take the same away and pay the charges thereon after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown (*Ibid.*, § 3716).

§ 9.

**Inventory
and order of
sale.**

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand that the property therein described be sold by any constable of the precinct where the same shall be at public auction (*Ibid.*, § 3717).

§ 10.

**Sale by con-
stable, notice
of.**

It shall be the duty of such constable receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts (*Ibid.*, § 3718).

APPENDIX.

§ 11.

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees (*Ibid.*, § 3719).

Return of constable and fees.

§ 12.

From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person (*Ibid.*, § 3720).

Justice to pay charges, etc.

§ 13.

The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the justice (*Ibid.*, § 3721).

Treasurer to make entry.

§ 14.

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory

When owner may claim deposit.

APPENDIX.

evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him (*Ibid.*, § 3722).

§ 15.

**If proceeds
not claimed.**

If the amount so deposited with any county treasurer shall not be claimed by the owner thereof or his legal representatives within the said five years, the same shall belong to the county, and may be disposed of as the county court may direct (*Ibid.*, § 3723).

§ 16.

Fees of justice and constable.

The fees allowed to any justice of the peace under the provisions of this title shall be three dollars for each day's service; and to any constable, the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property (*Ibid.*, § 3724).

§ 17.

Defrauding hotel and boarding-house keepers.

That any person who shall, with intent to defraud, obtain food, lodging or other accommodations at any hotel, inn, or boarding house, or who, after having obtained such food, lodging, or other accommodations at any such hotel, inn, or boarding house, shall surreptitiously remove his baggage from such hotel, inn, or boarding house, without first paying or tendering payment for such food, lodging, or other accommodations, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty (\$20) dollars, and

Penalty.

APPENDIX.

not more than one hundred (\$100) dollars, or imprisoned not less than ten days nor more than fifty days, or both (Laws of 1905, chap. 84, § 1).

§ 18.

That it shall be presumptive evidence of such intent to defraud if the person so obtaining such food, lodging, or other accommodations at such hotel, inn, or boarding house shall fail or refuse, on demand by the proprietor or manager of such hotel, inn, or boarding house, to pay and satisfy the reasonable charges for the same, unless such person shall, before obtaining such food, lodging, or other accommodations, have disclosed to such proprietor or manager his inability to pay and satisfy the same on demand (*Ibid.*, § 2).

**P r e s u m p t i v e
e v i d e n c e ,
w h a t i s .**

§ 19.

That the justice of the peace in each county shall have jurisdiction to enforce the provisions of this act (*Ibid.*, § 3).

APPENDIX.

XXXVI.

PENNSYLVANIA.

BRIGHTLY'S PURDON'S DIGEST OF THE STATUTE LAWS,
1894, WITH SUPPLEMENT, 1895.

§ 1.

**Refusal to accommodate,
on account of
race or color.**

Any person, company, corporation, being owner, lessee or manager of any restaurant, hotel, railroad, street railway, omnibus line, theatre, concert hall, or place of entertainment or amusement, who shall refuse to accommodate, convey or admit any person or persons on account of race or color over their lines, or into their hotel, or restaurant, theatre, concert hall, or place of amusement, shall, upon conviction thereof, be guilty of a misdemeanor, and be punished by fine not less than fifty dollars nor more than one hundred dollars (Bright. Purd. Dig., p. 533, § 355).

Penalty.

§ 2.

Every innkeeper shall keep good entertainment for man and horse, under penalty of five dollars for every case of neglect (*Ibid.*, p. 1021, § 1).

§ 3.

All livery-stable keepers and innkeepers within this commonwealth shall have a lien

APPENDIX.

upon any and every horse delivered to them to be kept in their stables, for the expense of the keeping; and in case the owner of the said horse or horses, or the person who delivered them for keeping to the keeper of the livery stable, or innkeeper, shall not pay and discharge the said expense, provided it amount to thirty dollars, within fifteen days after demand made of him personally, or in case of his removal from the place where such livery stable or inn is kept, within ten days after notice of the amount due, and demand of payment in writing left at his last place of abode, the livery-stable keeper, or innkeeper, may cause the horse or horses aforesaid to be sold at public sale, according to law: and after deducting from the amount of sales, the costs of sale and the expense of keeping, shall deliver the residue, upon demand, to the person or the agent of the person who delivered the horse or horses to him for keeping: *Provided always*, That nothing in this act contained shall be construed to impair any right of action, which the said livery-stable keepers or innkeepers may have against any person or persons, for the keeping his or their horse or horses (*Ibid.*, p. 1023, § 16).¹

Lien of inn-keepers, etc., for horsekeep.

§ 4.

All proprietor or proprietors of hotels, inns and boarding houses within this commonwealth, shall have a lien upon the goods and baggage

Lien on baggage.

¹ See *Singer Mfg. Co. v. Flannigan*, 7 Pa. Co. Ct. 45 (1888); *Gump v. Showalter*, 43 Pa. 507 (1862). A livery-stable keeper's lien can be exercised against a horse only for the expense of keeping that particular horse. *McManigle v. Crouse*, 1 Walker (Pa.), 43 (1887).

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belonging to any sojourner, boarder or boarders, for any amount of indebtedness contracted for boarding and lodging, for any period of time not exceeding two weeks,² and shall have the right to detain said goods and baggage until the amount of said indebtedness is paid; and at the expiration of three months, the said proprietor or proprietors may make application to any alderman or justice of the peace of the proper city, borough or county, who is hereby authorized to issue his warrant to any constable within said city, borough or county, and cause him to expose the said goods and baggage to public sale, after giving at least ten days' notice, by public written or printed notices, put up in three or more public places in the ward of said city or borough, or in the township, where said inn, hotel or boarding house is located; and after he shall have sold the same, he shall make return thereof to the said justice or alderman, who shall, after payment of all costs and the said amount of indebtedness, pay over the balance, if any there be, to the owner or owners of said goods or baggage: *Provided*, That the owner or owners of said goods and baggage shall have the right to redeem said goods and baggage, at any time within the said three months, upon paying the amount of said indebtedness, and at any time previous to the sale as aforesaid, upon paying also the additional cost established by law for like services (*Ibid.*, § 17).

**Right to re-
deem.**

² The words "not exceeding two weeks" are repealed as to Erie County. P. L. 1869, p. 971.

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§ 5.

Whenever the proprietor or proprietors of any hotel, inn or boarding house, shall provide a good, sufficient and secure safe in the office of such hotel or other convenient place, for the safe-keeping of any money, goods, jewelry and valuables belonging to the guests and boarders of such hotel, inn or boarding house, and shall notify the guests and boarders thereof, by placing in every lodging room, parlor and public hall, and other conspicuous places, printed cards or notices, stating the fact that such safe is provided, in which such goods, jewelry and valuables may be deposited, and that the proprietor or proprietors thereof will not be responsible for said money, goods, jewelry and valuables, unless deposited in said safe; and if any such guest or boarder shall neglect to deposit such money, goods, jewelry or valuables in such safe, the proprietor or proprietors aforesaid shall not be liable for any loss of such money, goods, jewelry or valuables, sustained by such guest, by theft or otherwise: *Provided*, That nothing herein contained shall apply to such an amount of money, and such articles of goods, jewelry and valuables, as is usual, common and prudent for such guest or boarder to retain in his room, or about his person. (*Ibid.*, § 18).³

Innkeepers, etc., may provide place of safe keeping for valuable property.

How notice thereof to be given.

Not to be liable therefor, unless deposited therein.

Exceptions.

³ Though notice of the requirement of deposit with the innkeeper was not posted on the doors as required by the statute, it might nevertheless be negligence, if the guest had actual notice of the regulation, to carry a large sum of money into his room. *Shultz v. Wall*, 134 Pa. 262, 19 Atl. 742, 26 Wkly. Notes Cas. 57, 19 Am. St. Rep. 686, 8 L. R. A. 97 (1890).

The proviso as to money, etc., such as it is "usual,

APPENDIX.

§ 6.

May give certain notices, and if not complied with, not to be accountable for goods stolen from rooms.

Proofs.

Whenever the proprietor or proprietors of any hotel, inn or boarding house, shall post in a conspicuous manner as aforesaid, notices requiring said guest or boarder to bolt the door of the room or rooms occupied by said guest or boarder, or in leaving the said room or rooms to lock the door and to deposit the keys with the proprietor or the clerk at the office; and if such guest or boarder shall neglect so to do, the proprietor or proprietors as aforesaid shall not be liable for any baggage of such guest or boarder, which may be stolen from said room or rooms: *Provided*, That said proprietor or proprietors shall clearly establish the fact of said room or rooms having been left unbolted or unlocked by said guest or boarder, at the time of the loss of said baggage as aforesaid (*Ibid.*, § 19).

§ 7.

Penalty for fraudulently obtaining board, etc.

Every person who shall, at any hotel or inn, or boarding house, receive or cause to be furnished any food or accommodations, with intent to defraud the owner or proprietor of such hotel, inn or boarding house out of the value or price of such food or accommodation, and every person who shall obtain credit at any hotel, inn or boarding house, by the use of any false pretences or device, or by depositing at such hotel, inn or boarding house any baggage

common and prudent for the guest and boarder to retain in his room or about his person," retains the innkeeper's common-law liability as to such articles. *Turner v. Whitaker*, 9 Pa. Super. Ct. 83, 43 W. N. C. 375 (1898).

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or property of value less than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent, and any person who, after obtaining credit or accommodation at any hotel, inn or boarding house, shall abscond from such hotel, inn or boarding house, and shall surreptitiously remove his baggage or property therefrom, shall (upon conviction) be adjudged guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail for a term of not more than six months (*Ibid.*, § 20).⁴

For absconding with baggage.

⁴ The statute makes no distinction between a guest and a permanent boarder, and includes every person who, with intent to defraud, obtains food or accommodations. *Commonwealth v. Gough*, 3 Kulp, 148 (1884).

A defendant may be convicted by establishing beyond a reasonable doubt any one of the following five therein enumerated particulars: (1) Where the defendant receives or causes to be furnished any food or accommodations with intent to defraud the proprietor of any hotel, inn, or boarding house out of the price of such food or accommodations; (2) where such defendant obtains credit by the use of false pretence or device; (3) where such defendant deposits any baggage or property of value, less than the amount of such credit, with such fraudulent intent; (4) where such defendant refuses to pay any bill incurred with such fraudulent intent (this includes all bills for accommodation at such hotel, other than food); and (5) where any person, after obtaining such credit or accommodation, shall abscond and surreptitiously remove his baggage or property. *Commonwealth v. Morton*, 9 Lanc. Bar, 79, 6 Luz. Leg. Reg. 207 (1877). The statute punishing surreptitious removal applies to the removal of baggage or of any other property, as in this case a gun; and it applies to such goods obtained by fraud after the act went into effect, though the charges on which they are held were incurred before the passage of the act. Where the guest obtained the property from the inn-keeper by false pretences, it was held to constitute a surreptitious removal. *Ibid.*

The very language of the act used in an indictment for

APPENDIX.

§ 8.

Copy of the
act to be
posted in
rooms.

Penalty for
overcharges.

Every keeper of a hotel, restaurant, inn or boarding house shall post in a public and conspicuous place in the office or public room, and in every bedroom occupied by guests in said house, a printed copy of this act, and a statement of the charges or rates of charges by the day, and for meals and items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any services not actually rendered, or for any items not actually delivered, or for a longer term than the person so charged actually remained at such place. For any violation of this section, or any provisions in this section, the offender shall forfeit his bill so charged, and upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term of not more than six months (*Ibid.*, § 21).⁵

§ 9.

Sale of for-
feited bag-
gage.

In case of default on the part of the guests in any hotel, inn or boarding house, to redeem, within sixty days, all baggage, *et cetera*, deposited as security for charges incurred, said baggage, *et cetera*, shall be sold at public auction,

obtaining credit at a hotel by false pretences, is not a sufficient charge of the offence, but the nature and character of the pretences must be alleged, that defendant may know the specific nature of the charge he is compelled to meet. *Commonwealth v. Dennis*, 1 Pa. Co. Ct. 278 (1884).

⁵ The posting of the notice required by this section is not necessary for conviction under the preceding section. *Commonwealth v. Morton*, 6 Luz. Leg. Reg. 207, 9 Lanc. Bar, 79 (1877).

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after due notice by publication for five days previous to sale; all excess of proceeds exceeding charges shall be held for the owner (*Ibid.*, § 22).

§ 10.

All keepers of hotels, inns, boarding houses and lodging houses, in this commonwealth, in addition to the remedies now provided by law, shall have the right, in suits and actions brought before justices of the peace to recover pay for boarding or lodging, or boarding and lodging, furnished, to commence such suits and actions by attachment, and thereon to attach only wages due or owing to such persons as may be indebted to them, or any of them, for boarding or lodging, or boarding and lodging, not exceeding in amount the sum due for four weeks; and any sum so due and so attached shall not be paid to the defendant until the judgment, which may be rendered against the defendant in pursuance of a summons to him or her directed, which shall issue with such attachment for such amount as may be so legally attached, shall be satisfied; and justices of the peace shall have jurisdiction of attachment proceedings in such case (*Ibid.*, § 23, as amended, P. L. 1905, Act 99, p. 134).⁶

**Attachment
of wages.**

Judgment.

Justices' jurisdiction.

⁶ Under an act of 1876 wages were allowed to be attached for board without giving the debtor the benefit of the ordinary \$300 exemption. *Hughes v. Jones*, 8 Kulp, 242 (1896); *Thomas v. Glascoe*, 2 Pa. Dist. R. 711, 13 Pa. Co. Ct. 167 (1892); *Smith v. McGinty*, 101 Pa. 402 (1882); *Carden v. Scott*, 1 Kulp, 196 (1882); *Blythan v. Rescorla*, 1 Kulp, 351 (1882); *McGentey v. Keefe*, 8 Luz. Leg. Reg. 179 (1879). Under the statute of 1889, however, the ordinary exemption was allowed

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XXXVII.

PORTO RICO.

REVISED STATUTES AND CODES, 1902.

§ 1.

Receiving guests.

Every person, and every agent or officer of any corporation, carrying on business as an innkeeper or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor (Penal Code, § 324).

by the courts in some counties. *Carnes v. McGuire*, 18 Pa. Co. Ct. 306 (1896); *Thomas v. Glascoe*, 2 Pa. Dist. R. 711, 13 Pa. Co. Ct. 167 (1892). It was not allowed in other counties. *McCarty v. Dougherty*, 16 Pa. Co. Ct. 86 (1895); *Dillon v. Treverton*, 16 Pa. Co. Ct. 89 (1895). The lien is for four weeks' board only; and eight weeks' board cannot thus be collected by splitting up the judgment and issuing two separate executions, each for two weeks' board. *Hawk v. Rock*, 14 Pa. Co. Ct. 490 (1894). The procedure requires first a judgment for the amount of the wages, and then an attachment of the wages on the judgment. *Dillon v. Treverton*, 16 Pa. Co. Ct. 89 (1895); *McCarty v. Dougherty*, 16 Pa. Co. Ct. 86 (1895); *Thatcher v. Beam*, 14 Pa. Co. Ct. 107 (1893); *McGinley v. McDonough*, 3 *Lanc. Law Rev.* 202, 27 *Wkly. Notes Cas.* 340 (1885); *Carden v. Scott*, 1 *Kulp*, 196 (1882). *Contra* in a few counties. *Thomas v. Glascoe*, 2 Pa. Dist. R. 711, 13 Pa. Co. Ct. 167 (1892); *Smith v. Dingus*, 2 Pa. Dist. R. 710, 12 Pa. Co. Ct. 299 (1892). A recognizance must be given by the plaintiff; a bond will not take its place. *Thomas v. Glascoe*, 2 Pa. Dist. R. 711, 13 Pa.

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§ 2.

Any person who obtains any food or accommodation at an inn or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn or boarding house by the use of any false pretence, or who, after obtaining credit or accommodation at any inn or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor (*Ibid.*, § 475).

Fraud on inn-keeper.

§ 3.

The bailee may retain the thing bailed until the full payment of what is due him by reason of the depositum (Civ. Code, § 1682).

Lien.

§ 4.

The depositum of goods made by travellers in inns or hostelrys shall also be considered a necessary one. The keepers of inns and hostelrys are liable for them as such bailees provided that notice thereof may have been given to them or to their employees, and that the travellers on their part take the precautions which said innkeepers or their substitutes may have advised them concerning the care and vigilance of said goods (*Ibid.*, § 1685).

Liability.

Co. Ct. 167 (1892). The record must show that the plaintiff was the proprietor of an inn or boarding house. *Walker v. Kennedy*, 7 Pa. Dist. R. 516, 20 Pa. Co. Ct. 433 (1898); *McCourt v. Brennan*, 11 Pa. Co. Ct. 645 (1891). It must also show that the debt was for wages. *Leiss v. Engard*, 8 Pa. Dist. R. 608, 15 Mont. Co. Law Rep. 173, 13 York Leg. Rec. 109 (1899).

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§ 5.

Same.

The liability referred to in the preceding section shall include damages to the goods of the travellers caused by servants or employees of the keepers of inns or hostelries as well as by strangers, but not those arising from robbery or which may be caused by any other case of force majeure (*Ibid.*, § 1686).

APPENDIX.

XXXVIII.

RHODE ISLAND.

GENERAL LAWS, 1896.

§ 1.

Any innkeeper who shall provide a suitable safe in his house, for the safe-keeping of any money, jewels, or ornaments, belonging to his guests, and shall notify them thereof by posting a printed notice conspicuously in the rooms that such safe has been provided for said purpose, shall not be liable for the loss of any money, jewels, or ornaments, by theft or otherwise, which any guest who has neglected to deposit the same in such safe may sustain (Gen. L., chap. 233, § 19).

Innkeeper not liable for the loss of money, jewels, or ornaments, by a guest, if he provide a suitable safe and give notice thereof.

§ 2.

Every person who shall enter a hotel, eating house, restaurant or victualing house, and having ordered and partaken of food or other refreshment therein, lodging or accommodation, shall fraudulently evade or attempt to evade payment therefor, shall be fined not exceeding twenty dollars or be imprisoned not exceeding thirty days (*Ibid.*, chap. 279, § 51).

Penalty for evading payment for accommodation at hotel, etc.

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§ 3.

Persons having liens on personal property, may apply to appellate division of the supreme court for an order for the sale thereof.

Whoever has a lien at common law for money due him on account of work and labor, care and diligence, or money expended on or about personal property or for storage of personal property or has a lien therefor on such account by reason of any contract expressed or implied, if such money is not paid within thirty days after a demand in writing delivered to the owner or some one of the owners, or left at his usual place of abode, if within this State, or made by letter mailed to him at his usual post office address without the State, may apply by petition in equity to the appellate division of the supreme court in the county where the petitioner or some one of the petitioners resides, for an order for the sale of the property in satisfaction of the debt: *Provided*, that if the petitioner or some one of the petitioners resides in the county of Kent or Bristol, such petition shall be brought in said division in Providence (*Ibid.*, chap. 206, § 28).

§ 4.

Citation to issue, when.

Upon filing the petition, the clerk of said division shall issue a citation to the owner of the property to appear before said court at a time and place designated, to show cause why such lien should not be allowed and enforced by said court for the amount claimed (*Ibid.*, § 29).

§ 5.

What to contain, and how served.

Such citation shall contain the substance of the petition and shall be served on the owner by a sheriff or deputy sheriff, at least ten days

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before the return-day of the citation, by leaving an attested copy at the last and usual place of abode of the owner, or by reading the same in his presence and hearing, if he reside in this State. If such owner reside without the State, such citation may be served upon him in the manner prescribed by law for service of subpoenas on non-resident defendants in suits in equity (*Ibid.*, § 30).

§ 6.

If the owner of the property is unknown, such petition may be filed thirty days after the money becomes due, and a citation may issue "to the unknown owner," describing the property. In such case, or if the residence of the owner is unknown, such citation may be served by publication in such manner as the court may direct (*Ibid.*, § 31).

In case the owner of property is unknown, citation may be served by publication.

§ 7.

If the owner makes default at the time appointed, or if upon a hearing of the parties it appears that a lien exists upon the property, and that the property ought to be sold for the satisfaction of the debt, the court may make an order for that purpose, and the property may be sold in conformity therewith. The court shall ascertain the amount due up to the time of the entering of the order and any surplus of the proceeds of the sale, after satisfying the debt and all costs and charges, shall be paid into the registry of the court for the benefit of the lawful owner thereof (*Ibid.*, § 32).

Property may be sold, when.

APPENDIX.

§8.

The five sections next preceding shall not limit or restrict the right of any party having a lien upon property to hold or dispose of the same in any other manner authorized by law, or by contract of parties (*Ibid.*, § 33).

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XXXIX.

SOUTH CAROLINA.

CODE OF LAWS, 1902.

§ 1.

Whenever and so long as the proprietor or proprietors of any hotel, inn, or boarding house shall post and keep posted in a conspicuous manner in the room occupied by any guest, a notice requiring such guest to bolt the door of such room, or on leaving his room to lock the door and leave the keys at the office, and also to deposit such money and jewels as are not ordinarily carried upon the person, in the office safe, and such guest shall neglect to comply with the requirements of such notice, the proprietor or proprietors of such hotel, inn, or boarding house shall not be liable for the loss of the baggage of such guests which may be lost or stolen from said room, or for the loss of such money and jewels not deposited in such safe: *Provided*, That this section shall not apply to cases in which the proprietor or proprietors of such hotel, inn, or boarding house have by their own negligence contributed to such loss (Civil Code, § 1741).

**Liability of
innkeeper
limited.**

APPENDIX.

§2.

**Procuring
board by
falsely mak-
ing written
representation
that there is
money due a
misdemeanor.**

Any person who procures board and lodging or board from any boarding house or innkeeper in this State upon the representation in writing that there is money due or to become due to him, to be paid on a future day, out of which he promises to pay for such board and lodging or board, and fails or refuses to so apply such money when collected by him, shall be guilty of a misdemeanor, and on conviction shall pay a fine not exceeding fifty dollars or be imprisoned not more than thirty days: *Provided*, That if such person shall pay the amount due by him for such board and lodging or board and the costs of the prosecution, the case may be discontinued, in the discretion of the magistrate issuing the warrant (Crim. Code, § 221).

APPENDIX.

XL.

SOUTH DAKOTA.

ANNOTATED STATUTES, 1901.

§ 1.

An innkeeper or keeper of a boarding house is liable for all losses of or injuries to personal property placed by his guests or boarders under his care, unless occasioned by an irresistible, superhuman cause, by public enemy, by the negligence of the owner, or by act of someone whom he brought into the inn or boarding house, and upon such property the innkeeper or keeper of a boarding house shall have a lien and right of detention for the payment of such amount as may be due him for lodging, fare, boarding or other necessities by such guest or boarder;¹ and the said lien may be enforced by a sale of the property in the manner prescribed in this code for the sale of pledged property, or as hereinafter provided:

Liability.

**Shall have
lien.**

How enforced.

1. Any person who shall obtain board, lodging or money advances from any hotel or innkeeper by false or fraudulent representations, and shall fail or refuse to pay for the same

**Defrauding
hotel or inn-
keeper.**

¹ This lien cannot be enforced against the goods of a third party brought to the inn by the guest. *McClain v. Williams*, 11 S. D. 227, 76 N. W. 930, 74 Am. St. Rep. 791, 49 L. R. A. 610 (1898).

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when demanded, or within ten (10) days after such demand, shall be held to have obtained the same with the intent to cheat and defraud such hotel and innkeeper, and shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred (\$100) dollars, or by imprisonment in the county jail or city workhouse not exceeding thirty (30) days.

**Fraud in use
of other than
real name.**

2. Any person who shall obtain board or lodging or any other accommodation at any hotel or inn by any other than his or her real and proper name, and fail or refuse to pay for the same when demanded, or within ten (10) days after such demand, shall be held to have obtained the same with the intent to cheat or defraud such hotel or innkeeper, and shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in this section.

**Lien, and how
enforced,
where baggage
left after
fraud.**

3. Baggage and other property and effects belonging to any person who, after obtaining board, lodging or other accommodations at any hotel or inn, shall abscond or absent himself or herself from such hotel or inn without having paid for such board, lodging or other accommodations may, at the expiration of thirty (30) days, be disposed of by the keeper of such hotel or inn at private or public sale, and the net amount realized from such sale shall be credited to the unpaid account of the absconder (Annot. Stat., § 4875).

§ 2.

If any innkeeper or boarding-house keeper keeps a fireproof safe, and gives notice to a

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guest or boarder either personally or by putting up a printed notice in a prominent place in the room occupied by the guest or boarder, that he keeps such a safe, and will not be liable for money, jewelry, documents or other articles of unusual value and small compass, unless placed therein, he is not liable except so far as his own acts contribute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest or boarder for present use (*Ibid.*, § 4876).

**How ex-
empted from
liability.**

§ 3.

The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property, and must be for the highest obtainable price (*Ibid.*, § 5614).

**Sale by auc-
tion.**

§ 4.

After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection; and must pay the surplus to the pledgor, on demand (*Ibid.*, § 5617).

**Proceeds of
sale, how dis-
posed of.**

§ 5.

Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company, or any other common carrier in the course of his or its business as common

**Sale of un-
claimed prop-
erty, when.**

APPENDIX.

carrier, shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction, after giving the owner or consignee fifteen days' notice of time and place of sale, through the post office and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the amount over, if any, shall be paid to the owner or consignee on demand (*Ibid.*, § 5041).

§ 6.

**Act applies to
hotel keepers.**

The provisions of this act shall apply to hotel keepers and warehousemen (*Ibid.*, § 5043).

APPENDIX.

XLI.

TENNESSEE.

SHANNON'S ANNOTATED CODE, 1896.

§ 1.

The rule of the common law giving a right of action to any person excluded from any hotel, or public means of transportation, or place of amusement, is hereby abrogated; and hereafter no keeper of any hotel, or public house, or carrier of passengers for hire, or conductors, drivers, or employees of such carrier or keeper, shall be bound, or under any obligation to entertain, carry, or admit any person whom he shall, for any reason whatever, choose not to entertain, carry, or admit to his house, hotel, carriage, or means of transportation, or place of amusement; nor shall any right exist in favor of any such person so refused admission, but the right of such keepers of hotels and public houses, carriers of passengers, and keepers of places of amusement and their employees to control the access and admission or exclusion of persons to or from their public houses, means of transportation, and places of amusement, shall be as perfect and complete as that of any private person over his private house, carriage, or private theatre, or places of amusement for his family (Shannon's Code, § 3046).

**Receiving
guests.**

APPENDIX.

§ 2.

Lien.

Keepers of hotels, boarding houses, and lodging houses, whether licensed or not, shall have a lien on all furniture, baggage, wearing apparel, or other goods and chattels brought into any such hotel, boarding house, or lodging house, by any guest or patron of the same, to secure the payment by such guest of all sums due for board or lodging (*Ibid.*, § 3590).

§ 3.

When it attaches.

The lien shall attach in all cases where a liability has been created, without regard to the time of such board or lodging (*Ibid.*, § 3591).

§ 4.

How enforced.

Said lien shall be enforced as other liens are enforced by law (*Ibid.*, § 3592).

§ 5.

Innkeeper may provide safe for deposit of valuables, and avoid liability.

Whenever the proprietor of any hotel or inn shall provide a safe in the office in such hotel or inn, or other convenient place, for the safe-keeping of any money, jewels, or ornaments belonging to the guests of such hotel or inn, or for any samples of merchandise of any kind carried by drummers or commercial travellers, and shall notify the guests thereof by posting a notice (stating the fact that such safe or other convenient place in which money, jewels, ornaments, or "samples" may be deposited) in the room or rooms occupied by such guests, in a conspicuous manner, if such guests shall neglect to deposit such money, jewels, ornaments, or samples of merchandise in such safe or other convenient place, the proprietor shall not be

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liable for any loss of such money, jewels, ornaments, or samples of merchandise sustained by such guest, by theft or otherwise (*Ibid.*, § 3593).¹

§ 6.

Persons who shall, at any hotel, inn, or boarding house, order and receive, or cause to be furnished, any food or accommodation, with intent to defraud the owner or proprietor of such hotel, inn, or boarding house out of the value or price of such food or accommodation; and any person who shall obtain credit at any hotel, inn, or boarding house by the use of any false pretence or device, or by fraudulently depositing at such hotel, inn, or boarding house any baggage or property of value less than the amount of such credit, or of the bill by such person incurred, unless credit be given by express agreement; and any person who, after obtaining credit or accommodation at any hotel, inn, or boarding house, shall surreptitiously remove his or her baggage or property therefrom, shall, upon conviction, be adjudged guilty of a misdemeanor, and be punished accordingly (*Ibid.*, § 3594).²

Intent to defraud; penalty.

§ 7.

Proof that lodging, food, or other accommodation, was obtained by false pretence, or by false or fictitious show or pretence of baggage, or that the party refused to pay for such food,

Proof of fraudulent intent.

¹ A watch and fob is within the phrase "jewels and ornaments" in this section. *Rains v. Maxwell*, 112 Tenn. 219; 79 S. W. 114 (1904).

² This statute is constitutional. *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481 (1895).

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lodging, or accommodation, on demand, or that he absconded without paying or offering to pay for such food, lodging or other accommodations, or that he surreptitiously removed, or attempted to remove, his or her baggage, shall be *prima facie* proof of the fraudulent intent mentioned in section 3594 (*Ibid.*, § 3595).

§ 8.

**Baggage may
be sold.**

At any time after thirty days after the person incurring the debt or obligation has left the hotel, inn, or boarding house, and the debt or obligation being still due and unpaid, the owner or proprietor of said hotel, inn, or boarding house may sell, at public auction, for cash, at hotel or boarding house office, any or all baggage or property left at said hotel, inn, or boarding house, to satisfy said debt or obligation, without any process at law or equity, provided that said sale shall be advertised by written or printed posters for at least ten days before said sale (*Ibid.*, § 3596).

§ 9.

**Speculation in
theatre tick-
ets.**

Penalty.

It shall be unlawful for any person, firm or corporation, to sell or offer for sale any theatre ticket or tickets for a greater price than the price for which same are sold at the box office of the theatre to which said tickets entitle the holders thereof to admission. Any person, firm or corporation violating the provisions of this act shall upon conviction be fined not less than \$50.00 and not more than \$100.00, and be imprisoned in the county jail or workhouse for a period not to exceed thirty days at the discretion of the court (Acts of 1903, chap. 545).

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XLII.

TEXAS.

REVISED CIVIL STATUTES, 1895.

§ 1.

Proprietors of hotels and boarding houses shall have a special lien upon all property or baggage deposited with them for the amount of the charges against them or their owners if guests at such hotel or boarding house (R. S., § 3318).

**Lien in favor
of hotels and
boarding
houses.**

§ 2.

When possession of any of the property embraced in the four preceding articles has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges the persons so holding said property, after twenty days' notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same (*Ibid.*, § 3222).

**When prop-
erty may be
sold for
charges.**

APPENDIX.

§ 3.

**When owner
lives out of
the state or
residence is
unknown.**

If the owner's residence is beyond the State or is unknown, the person holding said property shall not be required to give the ten days' notice mentioned in the preceding article before proceeding to sell (*Ibid.*, § 3223).

§ 4.

**Balance, how
disposed of.**

If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the State or from the county in which such repairing was done or such property was so held, it shall be the duty of the person so holding said property to pay the balance to the county treasurer of the county in which said property is held, and take his receipt therefor (*Ibid.*, § 3224).

§ 5.

**What is to be
done finally
with the bal-
ance.**

Whenever any balance mentioned in this chapter shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was so sold, and shall be applied as any other county fund or money of such county is applied or used (*Ibid.*, § 3225).

§ 6.

**Defrauding
hotels and
boarding-
house keep-
ers.**

Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representations, or statement or pretence, and shall fail or refuse to pay therefor, shall be held

APPENDIX.

to have obtained the same with the intent to cheat and defraud such hotel or boarding-house keeper, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one month, or by both such fine and imprisonment (Laws of 1899, chap. 101, § 1).

§ 7.

It shall be the duty of every hotel and boarding-house keeper in the State to post a printed copy of this act in a conspicuous place in each room of his or her hotel or boarding house, and no conviction shall be had under the foregoing section until it shall be made to appear to the satisfaction of the court that the provisions of this section have been substantially complied with by the hotel or boarding-house keeper making the complaint (*Ibid.*, § 2).

Posting notice.

APPENDIX.

XLIII.

UTAH.

REVISED STATUTES, 1898.

§ 1.

**Ranchmen,
herders, tav-
ern keepers,
etc., lien of.**

Any ranchman, farmer, agister, or herder of cattle, tavern keeper, or livery-stable keeper, to whom any horses, mules, cattle, sheep, or asses, shall be intrusted for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon such animals for the amount that may be due him for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession of such animals until the said amount is paid (R. S., § 1401).

§ 2.

**Innkeepers,
boarding
house, etc.,
lien of.**

Every hotel, tavern, boarding-house keeper, or person who lets furnished rooms, shall have a lien upon the baggage of his patrons, boarders, guests, and tenants for the amount that may be due from any such persons for such boarding, lodging, or rent, and he is hereby authorized to hold and retain possession of such baggage until the amount so due for boarding, lodging, or rent, or either, is paid (*Ibid.*, § 1402).

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§ 3.

At any time after thirty days after default made in the payment of a debt secured by a lien upon personal property, such lien may be foreclosed by advertisement, upon the notice and in the manner provided for the foreclosure of mortgages on personal property: *provided*, that a copy of the notice shall, at the time of posting or publication, be delivered to the owner of the property, or if he does not reside in the county, shall be transmitted to him by mail at his usual place of abode, if known. After paying the reasonable expenses of the sale, together with the amount due and the cost of keeping the property up to the time of the sale, the residue, if any, shall be rendered to the owner of the property. If the property be sold by advertisement, a statement shall be rendered to the owner of the property as the law prescribes shall be made to a mortgagor, and on failure to render such statement, the lienholder shall forfeit to the owner the sum of twenty-five dollars damages. The fees for the publication of notice shall in no case exceed the sum of three dollars, and the fees of the person crying the sale shall be two dollars per day (*Ibid.*, § 1405).

**Foreclosure
and sale.**

§ 4.

Nothing in this chapter shall take away the right of action of the party to whom such lien is given, for his charges, or for any residue thereof, after sale of such property (*Ibid.*, § 1406).

**Right of ac-
tion.**

APPENDIX.

§ 5.

**Obtaining
food, etc., un-
der false pre-
tences.**

Any person who shall put up at any hotel, inn, or boarding house, and shall procure any food, entertainment, or accommodation, without paying therefor, except where credit is given by express agreement, with intent to cheat or defraud such owner or keeper thereof out of the pay for the same; or who, with intent to cheat or defraud such owner or keeper out of the pay therefor, shall obtain credit at any hotel, inn, or boarding house for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto; or who shall with such intent remove or cause to be removed, any baggage, or effects from any hotel, inn, or boarding house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months (*Ibid.*, § 4470).

§ 6.

**Innkeeper re-
fusing guest.**

Every person and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor (*Ibid.*, § 4471).

§ 7.

Any person attending a theatre, opera house, or an indoor place of amusement as a spectator

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shall remove headwear tending to obstruct the view of any other person. Any person violating any of the provisions of the section shall be subject to a fine of not less than one dollar nor more than ten dollars for each offence, upon conviction thereof (*Ibid.*, § 4487).

High hats to be removed at theatre, etc.; penalty.

§ 8.

Every person, body-corporate, agent, manager, or employer, doing business in the State of Utah, who by coercion, intimidation, threats or undue influence, compels his employees to board at a particular boarding house, or to trade with or at a particular store, shall be deemed guilty of a misdemeanor (Laws of 1901, chap. 44).

No person must compel employee to board at particular house or trade at particular store.

APPENDIX.

XLIV.

VERMONT.

STATUTES, 1894.

§ 1.

**Innkeeper's
duty; license
vacated for
neglect.**

A person licensed as an innkeeper shall have suitable provisions, lodgings and accommodations for strangers and travellers, and suitable room, hay and provender for their horses and cattle, and a suitable shed or covering for horses near his house, with conveniences in the same for feeding horses; and if said innkeeper neglects to be so furnished, the authority granting such license shall vacate the same (Stat., § 4723).

§ 2.

**Liability of
innkeeper,
limited.**

Whenever an innkeeper shall provide a safe in such inn for the safe-keeping of any money, jewels, or ornaments belonging to the guests of such inn and shall give notice thereof by posting in a public and conspicuous place and manner in the office and public room, and in the public parlors of such inn the fact that such safe is provided in which such money, jewels, or ornaments may be deposited, if a guest shall neglect to deliver such money, jewels, or ornaments to the person apparently in charge of the

APPENDIX.

office of such inn for deposit in such safe, such innkeeper shall not be liable for any loss of money, jewels, or ornaments sustained by such guest, unless such loss shall occur through some want of ordinary care and diligence of such innkeeper. No innkeeper shall be liable to any guest for the loss of wearing apparel, or personal baggage for any sum exceeding three hundred dollars, unless it shall appear that such loss occurred through want of ordinary care and diligence of such innkeeper (*Ibid.*, § 4728).

Maximum liability.

§ 3.

No innkeeper shall be liable for loss or damage to articles known or used as "samples" belonging to commercial men or other persons occurring other than through want of ordinary care and diligence of such innkeeper (*Ibid.*, § 4729).

Commercial samples.

§ 4.

No innkeeper shall be liable for loss in case of fire or overwhelming force where such innkeeper has exercised ordinary and reasonable care in the custody of the baggage or other property of a guest (*Ibid.*, § 4730).

Fire or force.

§ 5.

A person who obtains food or lodging for himself, or others, at a hotel, with intent to defraud the owner or keeper thereof, shall be imprisoned not more than three months, or fined not more than fifty dollars (*Ibid.*, § 4961).

Fraud on hotel keeper.

APPENDIX.

XLV.

VIRGINIA.

CODE OF 1887, SUPPLEMENT OF 1899.

§ 1.

Lien of inn-keepers, etc.

Every innkeeper, keeper of an ordinary, boarding house, and house of private entertainment, shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder, for the amount which may be due him from such guest or boarder for board and lodging, until such amount is paid (Code, § 2489).

§ 2.

Enforcement of liens acquired under the three preceding sections, and of the lien of bailees.

Any person having a lien under either of the preceding sections, and any bailee, except such as mentioned in sections twelve hundred and twenty-one and twelve hundred and twenty-two, having a lien as such at common law on personal property in his possession which he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists be not paid within ten days after it is due and the value of the property affected by the lien does not exceed twenty dollars, may sell such property or so much thereof as may be necessary, by public auction, for cash, and apply the

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proceeds to the satisfaction of the debt and expenses of sale, and the surplus, if any, he shall pay to the owner of the property. Before making such sale, he shall advertise the time, place, and terms thereof, in such manner as to give publicity thereto, and also give to the owner, if he be in the county or corporation, ten days' written notice of the same and of the amount claimed to be due. If the owner cannot be found in such county or corporation, posting the notice at three public places therein shall be sufficient service thereof. If the value of the property be more than twenty dollars but does not exceed one hundred dollars, the party having such lien, after giving notice as hereinbefore provided, may apply by petition to any justice of the county or corporation wherein the property is, or, if the value of the property exceed one hundred dollars, to the county or corporation court of such county or corporation, for the sale of the property; and if, on the hearing of the case on the petition, the defence, if any made thereto, and such evidence as may be adduced by the parties respectively, the court or justice shall be satisfied that the debt and lien are established and the property should be sold to pay the debt, such court or justice shall order the sale to be made by the sheriff or sergeant of the said county or corporation or any constable thereof, who shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of *feri facias*. If the owner of the property be a resident of this State, the notice required by this section may be served in the mode prescribed by section thirty-two

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hundred and seven. If he be a non-resident, it may be served by posting a copy thereof in three public places in the county or corporation wherein the property is (*Ibid.*, § 2491).

§ 3.

How and when validity of the lien, or claim of other person to the property, is tried.

Any person may file his petition, at any time before the property is sold or the proceeds of sale are paid to the plaintiff under the judgment of the justice or court, disputing the validity of the plaintiff's lien thereon, or stating a claim thereto, or an interest in or lien on the same, and its nature; and the justice of the court, as the case may be, shall inquire into such claim, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property or proceeds of sale, the justice or court shall make such order as is necessary to protect his rights (*Ibid.*, § 2492).

§ 4.

Appeals, how taken and tried.

Any party may appeal from the judgment of the justice, as in case of warrants for small claims under chapter one hundred and forty, and such appeal shall be heard and determined in like manner, as appeals under said chapter (*Ibid.*, § 2493).

§ 5.

Defrauding innkeeper.

Whoever puts up at a hotel or boarding house and without having an express agreement for credit procures food, entertainment, or accommodation without paying therefor and with intent to cheat or defraud the owner or keeper of such hotel or boarding house out of the pay

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for the same; or with intent to cheat or defraud such owner or keeper out of the pay therefor obtains credit at a hotel or boarding house for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto; or with such intent obtains credit at a hotel or boarding house for such food, entertainment, or accommodation through any misrepresentation or false statement; or with such intent removes or causes to be removed any baggage or effects from a hotel or boarding house while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein shall be punished by imprisonment not exceeding three months or by fine not exceeding fifty dollars (*Ibid.*, § 3722b).

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XLVI.

WASHINGTON.

GENERAL STATUTES AND CODES, 1891.

§ 1.

Lien.

Hereafter all hotel keepers, innkeepers, lodging-house keepers, and boarding-house keepers in this State shall have a lien upon the baggage, property, or other valuables of their guests, lodgers, or boarders brought into such hotel, inn, lodging house, or boarding house by such guests, lodgers, or boarders, for the proper charges due from such guests, lodgers, or boarders for their accommodation, board or lodging, and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property, or other valuables until such charges are fully paid, and to sell such baggage, property, or other valuables for the payment of such charges in the manner provided in the next succeeding section of this title (Gen. Stat., § 2710).

§ 2.

Sale of baggage, etc., to satisfy lien; notice.

Whenever any baggage, property, or other valuables which have been retained by any hotel keeper, innkeeper, lodging-house keeper, or boarding-house keeper in his possession by vir-

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tue of the provision of the next preceding section of this title shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, innkeeper, lodging-house keeper, or boarding-house keeper to sell such baggage, property, or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property, or other valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand (*Ibid.*, § 2711).

§ 3.

No innkeeper who constantly has in his inn an iron safe or suitable vault in good order, and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones and bullion, and who keeps a copy of this section, printed by itself in large, plain Roman type, and framed, constantly and conspicuously suspended in the office, barroom, saloon, reading, sitting, and parlor room of his inn, and also a copy printed by itself in ordinary sized plain Roman type, posted upon the inside of the entrance door of every public sleeping room of his inn, shall be liable for the loss of any such article suffered by any

Responsibility of innkeepers limited.

APPENDIX.

guest, unless such guest has first offered to deliver such property lost by him to such innkeeper for custody in such iron safe or vault, and such innkeeper has refused or neglected to receive and deposit such property in his safe or vault, and to give such guest a receipt therefor; *provided*, that all doors to rooms furnished to guests shall be provided with slide bolts inside of such rooms on all doors; otherwise he shall be liable; but every innkeeper shall be liable for any loss of any of the above-enumerated articles by a guest in his inn, when caused by the theft or negligence of the innkeeper or any of his servants (*Ibid.*, § 2712).

§ 4.

Fraud on hotel keepers, etc.; penalty.

A person who obtains any food, lodging or accommodation at a hotel, boarding house, restaurant, or lodging house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at a hotel, boarding house, or lodging house by the use of false pretence, or who after obtaining board, lodging or accommodations at a hotel, boarding house, restaurant, or lodging house, absconds or surreptitiously removes his baggage therefrom without paying for his food, lodging or accommodation, is guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars, or imprisonment in the county jail not less than ten nor more than thirty days (Laws of 1903, chap. 131, § 1).

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§ 5.

Proof that lodging, food or other accommodation was obtained by false pretence or by false or fictitious sham or pretence of any baggage or other property, or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodation bank draft on which payment was refused, or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his baggage shall be *prima facie* proof of the fraudulent intent mentioned in section 1 (*Ibid.*, § 2).

**P r o o f o f
f r a u d u l e n t i n -
t e n t .**

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XLVII.

WEST VIRGINIA.

CODE OF 1899.

§ 1.

**Tavern li-
censes.**

Every house where food and lodging is usually furnished to travellers and payment required therefor, shall be deemed a hotel or tavern. Every person licensed to keep a hotel or tavern shall constantly provide the same with lodging and diet for travellers and their servants, and with stableage and provender, or pasturage and provender, as the season may require, for their horses; but if such hotel be in a city, village or town, the council may, if the applicant desire it, dispense with the necessity of providing for horses (Code, chap. 32, § 8).

§ 2.

**Fraud on ho-
tel keepers,
etc.**

Every person who shall at any hotel, inn, eating, lodging or boarding house, or restaurant, receive or cause to be furnished any food or accommodation with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boarding house, or restaurant, and any person who shall obtain credit at any hotel, inn, eating, lodging or boarding house, or restaurant, by the use of any false pretence or

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device, or by depositing at such hotel, inn, eating, lodging or boarding house, or restaurant, any baggage or property of value less than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent, and any person, who after obtaining credit or accommodation at any hotel, inn, eating, lodging or boarding house, or restaurant, shall abscond from such hotel, inn, eating, lodging or boarding house, or restaurant, or shall remove or attempt to remove therefrom any baggage or personal property of any kind subject to the lien hereafter mentioned, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boarding house, or restaurant, without having first paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred dollars, and may, at the discretion of the court or justice trying the case, be confined in the county jail for a term not less than ten nor more than thirty days. Any justice of the peace for the county wherein the offence was committed, shall have concurrent jurisdiction of such offence with the circuit or other courts of said county. The owner or keeper of any hotel, inn, eating, boarding or lodging house, or restaurant, shall have a lien upon, and may keep possession of, the baggage or other personal property of any kind, of any person or persons which he or they may have therein, for all such claims or bills for lodging, entertainment or accommodation, to the extent only of his said claim or bill; and after

Penalty.

Lien of hotel keepers, etc.

APPENDIX.

the expiration of three months from the date of the departure of such person or persons, and all or part of such claims remaining unpaid and not arranged, said property or such part thereof as may be necessary shall be sold to the highest bidder for cash, in the same way, upon the same advertisement, and by the same officers, that personal property is now sold on execution; and any money remaining from said sale after satisfying the claim, costs and expenses of sale, shall be paid to the person or persons, whose property was sold (*Ibid.*, chap. 145, § 32).

§ 3.

**Limitation of
liability.**

It shall be the duty of the keepers of hotels, inns, lodging or boarding houses to exercise due care and diligence in providing honest servants, and employees, and to take every reasonable precaution to protect the persons and property of his or their guests and boarders, but no such keeper of any hotel, inn, lodging or boarding house, shall be held liable in a greater sum than two hundred and fifty dollars for the loss of any wearing apparel, baggage or other property, not hereinafter mentioned, belonging to either a guest or boarder, when such loss takes place from the room or rooms occupied by said guest or boarder, and no keeper of a hotel, inn, lodging or boarding house, shall be held liable for any loss on the part of any guest or boarder of jewelry, money or other valuables of like nature: *Provided*, Such keeper shall have posted in the room or rooms occupied by guests or boarders in a conspicuous place, and in the hotel office and public reception room of such

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hotel, inn, lodging or boarding house, a notice stating the fact that "jewelry, money and other valuables of like nature must be deposited in the office of such hotel, inn, lodging or boarding house," unless such loss shall take place from such office after such deposit (*Ibid.*, § 33).

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XVIII.

WISCONSIN.

ANNOTATED STATUTES OF 1899.

§ 1.

**Liability of
innkeepers.**

No innkeeper who shall constantly have in his inn an iron safe, in good order and suitable for the safe custody of money, jewelry and articles of gold or silver manufacture and the like, and who shall keep a copy of this and the next succeeding section printed together in large, plain English type, and framed, constantly and conspicuously suspended in the office, barroom, saloon, reading, sitting and parlor rooms of his inn, shall be liable for the loss of any such articles aforesaid, suffered by any guest, unless such guest shall have first offered to deliver such property lost by him to such innkeeper for custody in such iron safe, and such innkeeper shall have refused or omitted to take it and deposit it in such safe for its custody, and give such guest a receipt therefor (Ann. Stat., § 1725).¹

¹ A watch is within the provisions of this section. *Stewart v. Parsons*, 24 Wis. 241 (1869).

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§ 2.

No innkeeper shall be liable for the loss of any baggage or other property of his guest, caused by fire, not intentional, produced by the innkeeper or any of his servants; but every innkeeper shall be liable for any loss of any guest in his inn, caused by theft or gross negligence of such innkeeper or any of his servants (*Ibid.*, § 1726).

Liability for loss of baggage.

§ 3.

Every innkeeper, and every keeper of a boarding house shall have a lien upon and retain the possession of the baggage and effects of any guest or boarder for the amount which may be due him for board from such guest or boarder, until such amount is paid (*Ibid.*, § 3344).²

Liens of innkeepers and boarding-house keepers.

§ 4.

Every person having a lien given by either of the four last sections, or existing in favor of any bailee for hire, carrier, warehouseman or pawnee, or otherwise, by the common law, may, in case such debt remain unpaid for three months, and the value of the property affected thereby does not exceed one hundred dollars, sell such property at public auction, and apply the proceeds of such sale to the payment of the amount due him, and the expenses of such sale. Notice, in writing, of the time and place of such sale, and of the amount claimed to be due, shall be given to the owner of such prop-

How lien enforced.

² See *Nichols v. Halliday*, 27 Wis. 406 (1871).

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erty personally, or by leaving the same at his place of abode, if a resident of this State, and if not, by publication thereof, once in each week, for three weeks successively, next before the time of sale, in some newspaper published in the county in which such lien accrues, if there be one, and if not, by posting such notice in three public places in such county. If such property exceed in value one hundred dollars, then such lien may be enforced against the same by action in any court having jurisdiction (*Ibid.*, § 3347).

§ 5.

Unclaimed property.

Whenever any personal property shall be consigned to or deposited with any common carrier, forwarding merchant, wharfinger, warehouseman, innkeeper, or the keeper of any depot for the storage of baggage, merchandise or other personal property, such consignee, or bailee, shall immediately cause to be entered in a proper book kept by him, a description of such property, with the date of the reception thereof; and if the same shall not have been so consigned or deposited for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee, at or before his reception thereof, he shall immediately notify the owner by mail thereof, if his name and residence be known, or can, with reasonable diligence, be ascertained (*Ibid.*, § 1637).

§ 6.

Sale.

If any such property shall not be claimed and taken away within one year after it shall have been so received, the same may be sold

APPENDIX.

as hereinafter directed; but when such property shall be perishable, or subject to decay by keeping, it may be sold if not claimed and taken within thirty days (*Ibid.*, § 1638).

§ 7.

Before any such property except as aforesaid, shall be sold, ten days' notice of such sale, if the property be perishable, or subject to decay in keeping, and sixty days' notice in other cases, shall be given the owner thereof by the person in possession of such property, either personally or by mail, or by leaving a written notice at his residence or place of business; but if the name and residence of such owner be not known, and cannot with reasonable diligence be ascertained, such notice shall be given by publication thereof for the periods aforesaid respectively, dating from the first publication, at least once in each week, in a newspaper published in the county, if there be one; and if there be none, then in a newspaper published in an adjoining county (*Ibid.*, § 1639).

Notice of sale.

§ 8.

If the owner or person entitled to such property shall not take the same away and pay the charges thereon, after notice as aforesaid shall have been given, the person having possession thereof, his agent or attorney, shall make and deliver to a justice of the peace of the same town an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown (*Ibid.*, § 1640).

**Proceedings
if property
not claimed.**

APPENDIX.

§ 9.

Inventory.

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described be sold by any constable of the city or town where the same shall be, at public auction (*Ibid.*, § 1641).

§ 10.

Notice of auction sale.

The constable receiving such inventory and order shall give ten days' notice of the sale, by posting up written notices thereof in three or more public places in such city or town, and sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts (*Ibid.*, § 1642).

§ 11.

Return of sale.

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of the sale, after deducting his fees (*Ibid.*, § 1643).

§ 12.

Proceeds, how disposed of.

From the proceeds of such sale the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of such sale shall not be sufficient to pay all the

APPENDIX.

charges; and the balance, if any there be, he shall immediately pay over to the treasurer of his county, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person. The county treasurer shall file such statement, give a receipt for the money, and properly enter in his books the amount thereof and the date (*Ibid.*, § 1644).

§ 13.

If the owner of the property sold, or his legal representatives, shall at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer, of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. If not claimed within said time by the owner or his legal representatives, the same shall belong to the county (*Ibid.*, § 1645).

**Owner, when
to have pro-
ceeds; when
to be paid
county.**

§ 14.

The fees allowed to any justice of the peace under this chapter, shall be one dollar for each day's service, and to any constable the same fees as are allowed by law for sales upon execution, and ten cents per folio for making an inventory of property (*Ibid.*, § 1646).

Officers' fees.

§ 15.

Any person who shall obtain credit at any hotel or boarding house for food, entertainment

APPENDIX.

Defrauding innkeeper

or accommodation, by means of any false show of baggage or effects brought thereto, or who shall, with intent to cheat or defraud the owner or keeper of any such hotel, inn or boarding house, out of the pay for any such food, entertainment or accommodation, remove or cause to be removed any baggage or effects from any hotel, inn or boarding house, while there is a lien existing thereon for the proper charges due from him for board and entertainment furnished as aforesaid, shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months (Laws of 1895, chap. 106).

§ 16.

Fraudulently obtaining food, etc.

Any person who obtains any food or accommodation at any hotel or inn without paying therefor, except when credit is given by express agreement, with intent to defraud the proprietor or manager thereof, or who obtains credit at any hotel or inn by use of any false show or pretence, or who after obtaining credit or accommodation at any hotel or inn, absconds or surreptitiously removes his baggage therefrom, without paying for his food and accommodation, shall be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months (Laws of 1897, chap. 197, § 1).

§ 17.

Complainant shall give se- curity for costs.

The complainant shall be required to give security for costs, and if he neglects or refuses so to do, no warrant shall be issued under the foregoing section of this act (*Ibid.*, § 2).

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§ 18.

Actions commenced under this act shall not be settled or compromised in any manner unless the costs incurred up to the time of such settlement or compromise are fully paid and discharged, and if any such settlement or compromise be made without such costs being paid as aforesaid, the court before whom such action is brought or is pending shall enter judgment against the complainant for the full amount of such costs so remaining unpaid (*Ibid.*, § 3).

Actions not to be settled unless all costs are paid.

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XLIX.

WYOMING.

REVISED STATUTES OF 1899.

§ 1.

**Safe; liability
limited.**

Every landlord or keeper of a public inn or hotel in this State, who shall keep in his place of business an iron safe, in good order and suitable for the purpose hereinafter named, and who shall post or cause to be posted in some conspicuous place in his office, and on the inside of every entrance door to every bed-chamber, the notice hereinafter mentioned, shall not be liable for the loss of any money, jewelry or other valuables belonging to his guests or customers, unless such loss shall occur by the hand or through the negligence of such landlord, or by a clerk or servant employed by him in such hotel or inn; Provided, That nothing herein contained shall apply to such amount of money or other valuables as is usually common and prudent for any such guest to retain in his room or about his person (R. S., § 2514).

§ 2.

Notice.

The notice required by the preceding section shall be substantially as follows: "Notice is hereby given that the proprietor of this house keeps an iron safe suitable for the safe deposit

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of money, jewelry, or other valuable articles belonging to his guests and customers, and unless they leave their money, jewelry, precious stones or other valuables with the landlord, his agent or clerk, in order that he may deposit the same for safe-keeping in such iron safe, he will not be liable for the loss thereof." (*Ibid.*, § 2515).

§ 3.

Any keeper of a hotel or boarding house or lodging house or restaurant shall have a lien upon the baggage or other personal property of any person who shall have obtained board or lodging or both, from such keeper, for the amount due for such board or lodging, and such keeper is hereby authorized to retain the possession of such baggage, or personal property until said amount is paid. If the amount due for such board or lodging is not paid within sixty days from the time the same shall have become due and payable, any such keeper may proceed to have such baggage or other personal property sold for the satisfaction of his lien in the following manner: He shall give ten days' prior notice of the sale of said articles by him held under his lien, a copy of which he shall immediately transmit, by registered letter, to the owner of the articles at his usual place of abode if known, and he shall post said notices of sale in three conspicuous and public places in the city, town, village or place where said keeper resides, giving a description of the articles to be sold and the time and place of sale, one of which notices shall be posted in the of-

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fi ce of the hotel, lodging house, boarding house or restaurant, if still maintained. At the time mentioned in said notices, the said keeper may proceed to sell to the highest and best bidder for cash, all of such personal property held under the lien, or so much thereof as shall be necessary to pay his claim, and the residue of the unsold property, together with the surplus proceeds of such property sold, if any, he shall surrender to the owner, his heirs or legal representatives on application therefor (*Ibid.*, § 2860).

§ 4.

**O b t a i n i n g
b o a r d o r l o d g -
i n g b y f a l s e
r e p r e s e n t a -
t i o n s .**

It is hereby declared to be a misdemeanor to procure board or lodging, or both, under and by false or fraudulent representations. Every person convicted of such misdemeanor shall be punished by a fine of not more than twenty-five dollars nor less than five dollars, or by imprisonment in the county jail not more than thirty days, nor less than five days, or by both; Provided, That the action may be dismissed upon the payment by the defendant, of the amount due for such board or lodging, and the costs of the action (*Ibid.*, § 5145).

§ 5.

**H a t s o f f i n
t h e a t r e .**

Any person attending a theatre, opera house, or an indoor place of amusement as a spectator, shall remove headwear tending to obstruct the view of any other person. Any person violating any of the provisions of this section shall be subject to a fine of not less than one nor more than ten dollars for each offence, upon conviction thereof (*Ibid.*, § 2629).

APPENDIX.

L.

DISTRICT OF COLUMBIA.

CODE OF 1902.

§ 1.

Every innkeeper, keeper of a boarding house, or house of private entertainment shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder for the amount which may be due him from such guest for board and lodging until such amount is paid (Code, § 1261). **Lien.**

§ 2.

If the amount due and for which a lien is given by any of the last three sections is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, **Enforcement by sale.**

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if any, shall be paid over to the owner of the property (*Ibid.*, § 1263).

§ 3.

**Enforcement
by bill in
equity.**

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law (*Ibid.*, § 1264).

§ 4.

**Defrauding
hotel keeper.**

Any person who obtains any lodging, food, or accommodation at an inn, boarding house, or lodging house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding house, or lodging house by the use of any false pretence, or who, after obtaining credit or accommodation at such an inn, boarding house, or lodging house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of the District of Columbia be fined not more than one hundred dollars or imprisoned not more than six months, or both, in the discretion of the court (*Ibid.*, § 842).

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LI.

UNITED STATES.

COMPILED STATUTES, 1901.

§ 1.

All persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude (Comp. Stat., § 1977, par. 1).

**Civil Rights
Act.**

§ 2.

That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt,

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with full costs; and shall also, for every such offence, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: Provided, That all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by state statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: And provided further, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively (*Ibid.*, par. 2).¹

¹ Sections 1 and 2 of this act have been held unconstitutional, at least so far as their operation in the several States is concerned, but without deciding whether the law as it stands is operative in the Territories and District of Columbia. Civil Rights Cases, 109 U. S. 3, 27 L. Ed. 835 (1883).

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